

THE GOVERNOR OF MARYLAND

A CONSTITUTIONAL STUDY

BY

CHARLES JAMES ROHR

A DISSERTATION

Submitted to the Board of University Studies of the Johns
Hopkins University in Conformity with the Requirements
for the Degree of Doctor of Philosophy

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PREFACE

The governor in the American state has become the central figure in state politics and in the state government as a whole. He is no longer the nonentity or subordinate of the legislature as he was in the first state constitutions. Every succeeding major constitutional alteration or revision has succeeded in granting to him powers of a high order. Yesterday, the state legislature occupied the position of power; today, the governor has taken its place.

The story of the evolution of the governor's office during the nineteenth century and in recent years, its gradual gain of power and importance, the shift of the popular interest to it from the representative body, has been narrated by many authorities; but those writers have made general studies of the office. Very few have restricted themselves to any particular state.

It is the aim of the present writer to present a study of the governor of one state—Maryland. He has not attempted to give a detailed account of the office; rather, he has attempted, to the best of his abilities, to present a connected narrative of the governor's office from the colonial period to the present time. It is a constitutional study of the historical development and present powers of the office. Very few personalities have been mentioned; on the other hand, they have been, for the most part, rigidly excluded. It is a study of the institution itself and not of the human beings who have occupied the office.

The author was prompted to undertake this study at the instigation of Professor W. W. Willoughby, who was interested in having his students make a complete study of the government of the State of Maryland. Messrs. G. K. Reiblich and H. J. Green had already written accounts of the Judicial and Legislative Departments, respectively; and Professor Willoughby suggested the Executive Department to the pres-

ent writer as a subject of investigation. To Professor Willoughby, then, the writer is indebted for the subject of the study as well as for constant advice and encouragement at all times offered to him during its compilation. Acknowledgment is especially due to Professor James Hart, under whose supervision the work was completed, for his aid in the general outlining of the subject, for his reading of the rough drafts of each chapter, and, most of all, for his valuable and inspirational criticism.

To all those persons who have given aid and information, the writer is fervently grateful: Dr. Horace E. Flack, of the Department of Legislative Reference; Dr. Frank Johnson Goodnow, President Emeritus of the Johns Hopkins University; Mr. Edward H. Burke, son of the late Judge Charles Burke; Dr. George S. Godard and Miss Helen Coffin, of the Connecticut State Law Library; Miss Mary E. Shearn and Miss Frances B. Wells, of the Maryland State Library; Miss Hattie F. Fuxman, of the Maryland Attorney-General's office; and, last but certainly not least, the writer's mother who typed every word of the manuscript.

C. J. R.

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THE GOVERNOR OF MARYLAND

CHAPTER I

INTRODUCTION

The chief executive¹ of the modern American state occupies a position quite dissimilar from that of his historical predecessor in the early state governments established immediately following the Declaration of Independence. In the beginning, a state officer clothed with only a semblance of power, and subordinate in almost every respect to the legislature, he has risen today in the State to a position of power and authority, to a status coordinate to that of the law-making body; and, occupying, for the most part, a position in the states somewhat analogous to that of the President of the United States.

Increase in the power of the governor has been a constant tendency from the foundation of the state governments to the present time. The federal analogy has been an influential factor in this change because the efficiency and vigor of the national government have generally been attributed to its strong executive. There has been a general turning away from the legislature to the governor.²

At the beginning of the constitutional period of American history, almost the entire executive, administrative, judicial, and legislative power in the states was lodged in the legislative department, notwithstanding the paper assertions in the constitutions of the separation of powers.³ Deprecating this

¹ As used in this study, the terms "chief executive," "executive," and "governor" shall be deemed synonymous and used interchangeably.

² C. P. Patterson, *American Government*, 1929, pp. 544-545.

³ The doctrine of the separation of powers is well expressed in the Massachusetts Constitution of 1780, article 30: "In the government of this commonwealth the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them, to the end that it may be a government of laws and not of men." In the formation of the early constitutions,

apparent contradiction, Madison wrote:⁴

Experience proves a tendency . . . to throw all power into the legislative vortex. The executives of the states are little more than ciphers; the legislatures are omnipotent. If no effectual check be devised on the encroachments of the latter, a revolution will be inevitable.

Again, in another place, he forcibly asserted:⁵

They [the framers of the state constitutions] seem never to have recollected the danger from legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations.

These and many other warnings by the leading statesmen of the period were given of the dangers which would inevitably arise from such a policy.⁶

Such was the general reaction throughout the states to the bitter experience with the tyrannical royal and proprietary executives who stood for irresponsible power and consequent oppression without recourse, in whom all of the important governmental powers had been lodged. Long before the mutterings of the Revolutionary War, the history of the colonies was replete with the struggle for supremacy between the governors and the legislatures.⁷

The experience of the people with the colonial governors had taught them the danger of a strong executive. They believed that, in order to preserve liberty, it was essential to place the strongest power in the representative body. To accomplish this, the constitutionalists changed what had been a powerful executive into an officer, nominally constituted

six States explicitly affirmed the doctrine; viz., Ga., Md., Mass., N. H., N. C., and Va. The other seven, with the exception of Connecticut and Rhode Island, at least tacitly affirmed it.

⁴ Quoted in Bancroft, *Formation of the Constitution*, II, 168. "The accumulation of all powers, legislative, executive, and judicial, in the same hands, whether of one, a few, or many, whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." Madison in No. 47, *The Federalist*.

⁵ *Federalist*, No. 48. For similar pronouncements, as well as for a general treatise on the separation of powers, see W. B. Bondy, "The Separation of Governmental Powers," in *Columbia College Studies in History, Economics, and Public Law*, V, 13 ff.

⁶ Bondy, *op. cit.*, pp. 13 ff.

⁷ E. B. Greene, *The Provincial Governor*, *passim*; W. F. Dodd, *State Government*, pp. 95-96 (1st edition); A. Nevins, *The American States, During and After the Revolution, 1775-1789*, pp. 166 ff.

the chief executive, whose every movement was hampered in the constitutions and in the statutes.⁸ Well might Jefferson exclaim that this was "an elective despotism" and "not the government we fought for."⁹ "Thus one great eighteenth century principle which the constitutions were supposed to vindicate, the principle of the balance of departments, they signally failed to apply."¹⁰ Nowhere was there any practical application of Montesquieu's classical theory as paraphrased so ably by Madison,¹¹ except perhaps in the constitutions of New York, Massachusetts, and New Hampshire, wherein attempts, at least, were made to apply the doctrine of the separation of powers in a logical manner.¹²

A brief description of the governor prior to the opening of the nineteenth century is indicative of the relatively unimportant position in which he was placed. In most of the states the chief executive was elected by the legislatures,¹³ and for a short term,¹⁴ with no chance of reelection. He had, as a rule, no veto power,¹⁵ and only a limited pardoning power. Not in any state could he exercise the appointing power singly,¹⁶ and, in several, not at all. Administrative officers were almost everywhere elected by the legislatures.

⁸ L. A. Blue, *The Relation of the Governor to the Organization of the Executive Power in the States*, p. 10; A. N. Holcombe, *State Government*, 1928, pp. 56-57.

⁹ Notes on Virginia, ch. xiii. Quoted by Holcombe, *op. cit.*, p. 57.

¹⁰ Nevins, *op. cit.*, p. 170.

¹¹ *Federalist*, No. 47. The doctrine seems to have meant no more than that no one of the departments should exercise the constitutional powers of the other. Holcombe, p. 57.

¹² *Ibid.*, pp. 52-55. Even in these States there was somewhat of a confusion of powers out of which grew the supplement to the separation of powers,—the theory of checks and balances.

¹³ Except in N. Y., Mass., Vt., Conn., and R. I., where the executive was elected by the qualified voters, a very restricted suffrage, Fairlie, "The State Governor," *Michigan Law Review*, X, 371.

¹⁴ Usually one or two years.

¹⁵ In the first constitutions, only one State, Massachusetts, conferred even a qualified veto. McLaughlin and Hart, *Cyclopedia of American Government*, III, 382; Nevins, p. 182. In the South Carolina Constitution of 1776, however, an absolute negative was granted to the governor; but this was withdrawn two years later. Holcombe, p. 52.

¹⁶ Only in conjunction with an executive council. *Cyclopedia of American Government*, II, 91. The council also served in an advisory capacity.

The powers of proroguing and dissolving the legislature, which were included in the prerogative of the colonial governor, were withdrawn. "The general result was to leave the governor a narrow range of authority."¹⁷

Changes of a radical character have taken place in regard to the executive since the first constitutions. These changes may be grouped in two periods: the first extending approximately to the middle of the nineteenth century, and the second from that date until the present time.¹⁸

The first period is characterized, on the one hand, by the increased importance of the governor's relations with the legislature, following closely the Federal Executive; and, on the other hand, by the decline of his already limited administrative power, as contrasted with the original and rapidly increasing administrative power of the President.¹⁹

Instead of being elected by the legislature, the governor, in this period, became everywhere elective by popular vote. In this respect, at least, his position in relation to the legislature was at this time one of equality. On the other hand, the legislature, which had been practically omnipotent legislatively and administratively, was being rapidly divested of its power in the latter field as well as checked in the exercise of the former. "This decline of the legislature was due principally to the loss by the people of the complete confidence which they had originally possessed in that body as their immediate representatives."²⁰

¹⁷ Fairlie, *op. cit.*, pp. 371-372.

¹⁸ The survey of these periods is drawn chiefly from Fairlie, pp. 372-373; Blue, pp. 10-12; Nevins, pp. 171-205, 207-419; Holcombe, chs. iv and v; Mathews, *Principles of American State Administration*, chs. i to iv.

¹⁹ For the Administrative Powers of the President, see Fairlie, *Michigan Law Review*, II, 190-210; W. W. Willoughby, *The Constitutional Law of the United States*, 1929, pp. 1481 ff.

²⁰ Mathews, *op. cit.*, pp. 36-37. This loss of confidence was due largely to legislative corruption and extravagance which emphasized the need of a curtailment of, and a check upon, the enormous power of that body. As Mr. Hoffman expressed it, in the New York Constitutional Convention of 1846: "... he had heard of the expression often from men of every class, at the close of the legislative session, of thanks to God that the legislature had adjourned without doing any more mischief," and, with regard to the governor's veto power,

Another factor which extended the independence of the executive was the lengthening of his term from one year to two, three, or even four years. At the same time, the qualified veto was granted to him in a number of states; and the fraction of the legislature necessary to override his negative was increased.²¹ At times, however, the veto power was of little avail, for the legislature frequently voted extravagant appropriations for internal improvements over the veto.²² This further caused the people to lean from the body in which they had placed their trust and towards the executive as their champion to act as a check upon the legislature.

While the power of the governor as a legislator was increasing, his control of the administration, except in Pennsylvania, suffered a strong decline. This was not due so much to the general fear of "one-man" power, as "to the widespread feeling that more powers should be lodged directly in the hands of the people."²³ Everywhere this was manifested by the popular election of most of the principal executive, administrative, and judicial officers formerly appointed by the governor and legislature.²⁴ This was the beginning of the plural executive and the decentralization of the administration.²⁵

Thus, by the middle of the nineteenth century, the administrative power of the governor was at its lowest ebb. The general result of the development of the governor's position was, therefore, more preponderantly legislative than administrative, rendering his status as an executive of less importance than at first. The independence of the other executive

he declared that it was popular because "it had been . . . a power exercised in direct vindication of the rights of the masses against monopoly, against privilege, against extravagance and debt." Quoted in full by Mathews, *op. cit.*, pp. 36-37.

²¹ *Ibid.*, p. 36.

²² *Ibid.*

²³ *Ibid.*, p. 38. The rise of the Democratic-Republican party was a symptom of a movement throughout the country which continued to grow until it resembled a great democratic wave. It was accompanied by a "sublime faith in the unlimited capacity of the people to perform almost any political function." *Ibid.*

²⁴ Fairlie, *Mich. Law Rev.*, X, 372; Mathews, p. 39.

²⁵ Holcombe, p. 296.

officers of the chief executive was in sharp contrast with the relation of the President to his departmental heads in the national government.

In the next period, we note the marked reaction from the preceding one in the steady rise in power, prestige, and influence of the governor's position, brought about partly through constitutional reform, statutory enactments, and extra-legal influences.²⁶

Due to the growing complexity of economic life in the state and to the consequent increase in the state's administrative functions, a large number of boards, commissions, and offices were created which had been unknown in the earlier period.²⁷ By constitution and statute, the appointment of these new agencies was placed in the hands of the governor, usually acting in conjunction with the upper house.²⁸ This increase in the appointing power in itself, while adding to the governor's patronage, and to his control of the administration, did not establish the governor as chief administrator because his power of removal was not made commensurate with his appointing power. It was increased to some extent but was greatly inferior to the removal power possessed by the President.²⁹

In the field of legislation, the veto power was almost everywhere extended and made more energetic and efficacious. Also, almost all of the constitutions now gave the governor the power to call special sessions of the legislature, to send special messages to it, and to adjourn it in case of disagreement between the two houses as to the time of adjournment. Finally, he acquired a positive initiative in legislation through the operation of certain extra-legal influences which established him as a political officer of the first magnitude.³⁰ "The general result," says Professor Fairlie, "had been to

²⁶ *Ibid.*, pp. 117-122; Mathews, p. 41.

²⁷ *Ibid.*

²⁸ *Ibid.*, pp. 41-42; Fairlie, pp. 372-373. Some of these offices were made elective; but, due to their great number and almost impossible task of placing them on the voting list, many were made appointive.

²⁹ Mathews, p. 42.

³⁰ *Ibid.*, p. 42; Patterson, p. 608.

emphasize decidedly the importance of the governor's office, although his authority still falls much short of that of the President of the United States."³¹

The disintegration, decentralization, and general irresponsibility of the executive department, due to the popular election of executive and administrative officers and consequent lack of effective control by the chief executive over them, had one great effect upon the governor. He came to be only nominally the head of the executive branch of government; in fact, only one among equals. At the same time, the rise of the party system placed him in the position of party leader, depended upon to carry out the provisions of the party platform. Thus, he was placed in an anomalous position: held responsible for the character of his administration, but with few legal means of controlling the other executive and administrative officers in order to influence the determination and execution of administrative policy. Besides the drastic step of calling out the armed forces of the state in order to enforce the law, the only other weapon was through "specific mandatory legislation."³² "The solution was inevitable; the legislative prerogatives of the chief executive became vastly enlarged. The governor was transformed, in effect, from a chief executive into a chief legislator for the state."³³ Thus, the weak administrative position of the governor left as the only unifying force the bond of common political allegiance, hardly adequate for coördinated administrative effort.³⁴

THE RELATION OF THE MODERN GOVERNOR TO THE LEGISLATURE

As we have seen, by the development of his office, the governor, while nominally constituted the chief executive, par-

³¹ Fairlie, p. 373.

³² Patterson, p. 608.

³³ Ibid.

³⁴ Though "enough to secure combination and coöperation toward reelection." Ibid. "This bond was totally inadequate for the purpose of enforcing a systematic and efficient conduct of affairs." Holcombe, p. 291.

ticipates in the formation of public policy,³⁵ as well as in its execution; and, moreover, his influence today in connection with the former is frequently of greater importance than with the latter.³⁶ In justification for the use of this influence, Mathews argues:³⁷

On account of the wide scope of legislative authority over the regulation of the administration, the executive authority must have some share in the exercise of legislative power, if it is to have laws which it can exercise sympathetically. A proper coördination of the making and the execution of the law thus requires that the executive authority should have some influence over the lawmaking process.

Speaking of the active participation of the chief executive in legislation, Professor Munro writes:³⁸

The governor initiates legislation, promotes it, often pushes it through both chambers by the weight of his official influence, and signs it after it has been passed. He is at all times potentially, and much of the time actually, a participant in all stages of the law-making process.

The legal powers of the governor pertaining to the initiation of legislation are exercised principally through the sending of messages and recommendations to the legislature at either regular or special sessions.³⁹ Holcombe says of this: "The executive messages are looked to by the people of the states as legislative programs, and consequently exert a greater influence upon the course of legislation than may be pronounced on the floor of either house."⁴⁰ The recommendations are frequently addressed over the heads of the legislators to the electorate in the hope of generating public sentiment that will bring pressure to bear on the representatives.⁴¹ The messages usually contain the policies endorsed in the party platform, or policies for which the governor assumes responsibility. Bills introduced in pursuance of these policies by the governor's spokesmen, have attracted to

³⁵ L. M. Sait, "Participation of the Executive in Legislation," *Academy of Political Science Proceedings*, V, 127-137.

³⁶ Mathews, *State Government*, p. 216.

³⁷ *Ibid.*

³⁸ *The Government of the United States*, 1928, pp. 478-479.

³⁹ Mathews, pp. 220-222.

⁴⁰ *State Government in the United States*, 1926, p. 319.

⁴¹ C. P. Patterson, *American Government*, 1929, p. 617.

them special legislative importance as "administration measures,"⁴² and are given precedence in some states over all other bills.⁴³ In a special session the governor has more direct control, because he usually has power to determine the agenda of these extraordinary meetings, and can focus popular attention on crucial issues.⁴⁴ If the governor is looked upon as the leader of the majority party in both houses, his initiative will naturally be stronger and his recommendations will stand a greater chance of being adopted.⁴⁵

By far the most effective instrument in the hands of the governor in controlling legislation is his power of approval or disapproval of all bills⁴⁶ presented to him by the legislature for his signature before they become law.⁴⁷ In most respects, this is a power similar to that held by the President in his relation to Congress.⁴⁸

Formerly, the governor, like the President today, was restricted to passing or rejecting a bill *in toto*, notwithstanding that some parts of it might be deemed good and others bad. Especially was this a serious limitation upon the effective exercise of the veto, particularly with reference to bills of a fiscal nature. In such a case, the governor was forced

⁴² Bates and Field, *State Government*, 1928, p. 275.

⁴³ See *Amer. Pol. Sc. Rev.*, VII, 239, for the Illinois practice of giving precedence to administrative measures.

⁴⁴ The final determination for the necessity of a special session usually lies with the governor and may not be questioned. Dodd, *State Government*, p. 166; Mathews, *op. cit.*, pp. 218-219.

⁴⁵ *Mich. Law Rev.*, X, 377; Ogg and Ray, *Introduction to American Government*, 1925, p. 692; Mathews, p. 221.

⁴⁶ With certain minor exceptions, see Fairlie, *Mich. Law Rev.*, X, 379-380.

⁴⁷ The power of veto is granted in every state except North Carolina. In the early constitutions it was given only in New York, Massachusetts, and South Carolina. For a detailed study of the gubernatorial veto, see J. A. Fairlie, "The Veto Power of the State Governor," *Amer. Pol. Sc. Rev.*, XI, 473-493. For accounts of the veto in specific states, see K. E. Carlson, "The Exercise of the Veto Power in Nebraska," 1917, in *University of Nebraska History and Political Science Series*, Bulletin No. 12; J. A. Swisher, "The Executive Veto in Iowa," *Iowa Journal of History and Politics*, 1917, XV, 155-213. For the purpose of the Veto, see 12 *Ruling Case Law*, p. 1006; Taft, *Our Chief Magistrate*, p. 16.

⁴⁸ A qualified veto, such as the governor and president possess, requires a certain majority of both houses of the legislature before it can be overridden. *Mich. Law Rev.*, X, 380.

to decide between passing the whole bill, including items unnecessarily large or for unworthy projects, or vetoing the entire measure and thus delaying the voting of funds essential for the operation of the government.⁴⁹ The former alternative, it may be said, was too frequently adopted, especially toward the end of a session when a bill so rejected would have no time for repassage or reconsideration by the legislature.⁵⁰

In order to obviate this difficulty, in all but ten states the governor has been granted the power to veto items in appropriation bills.⁵¹ In Pennsylvania, and a few other states, this power has been enlarged further and construed to allow the chief executive to reduce the amount of any item as well as to strike out items.⁵² The item veto not only extends the governor's authority in state fiscal policy but places upon him responsibility for the economy of his administration. "This plan," writes Patterson, "has, however, enabled the legislatures to embarrass the governor by making exceedingly liberal appropriations and letting him shoulder the responsibility for their reduction."⁵³ For this reason, there is small wonder when the records show that the item negative tends to become quite frequent.⁵⁴

The present-day effectiveness of the veto has engendered a degree of executive influence in legislation that is hardly to be calculated by the number of bills passed. In the first place, political harmony between the governor and the legislature

⁴⁹ Mathews, pp. 222-223.

⁵⁰ Ogg and Ray, *op. cit.*, p. 689.

⁵¹ A full account of the item veto is given by Roger H. Wells, in "The Item Veto and State Budget Reform," *Amer. Pol. Sc. Rev.*, XVIII, 782-791; Fairlie, "The Veto Power of the State Governor," *Amer. Pol. Sc. Rev.*, XI, 483. The item veto was first established in the Confederate Constitution of 1861. Georgia adopted it in 1865 and Texas in 1866. South Carolina and Washington permit the veto of items in any bill. Kettleborough, *State Constitutions*, pp. 1231, 1450 respectively.

⁵² *Commonwealth v. Barnett*, 199 Pa. 161. *Contra*, see cases cited by Wells, *op. cit.*

⁵³ Patterson, p. 615. See also, Mathews, p. 224; *ibid.*, "The New Stateism," *North Amer. Rev.*, CXCHII, 808-815; and "The New Rôle of the Governor," *Amer. Pol. Sc. Rev.*, VI, 216-228.

⁵⁴ *Mich. Law Rev.*, X, 381.

may operate to decrease the number of bills vetoed.⁵⁵ In the second place, in order to avoid the veto, members of the legislature frequently confer with the governor in order to learn his attitude upon pending legislation. As Mathews says: ". . . the governor's attitude towards pending legislation is often a matter of common knowledge, and such knowledge may cause a bill to be modified or prevent its passage altogether."⁵⁶ Oftentimes, measures which have been presented to the governor are, at his suggestion and before definite action on his part, recalled by joint resolution and amended in order to avoid the negative.⁵⁷ In such ways, and by other devious means, the governor's negative has been transformed into a definite positive influence.⁵⁸

In recent years the governor has been given an additional positive power in relation to the legislative process through the introduction in many of the states of the executive budget.⁵⁹ "This became necessary because of the ineffectiveness of the item veto, the extravagance of the legislature, and the irresponsibleness of the system."⁶⁰ Thus, in order to overcome the deficiencies of the item veto, to provide for economy in state financial affairs, and to centralize responsibility in one head, the governor in some states is empowered to submit to the legislature a "comprehensive financial program, containing a complete plan of proposed expenditures and estimated revenues for the ensuing fiscal period."⁶¹ In the states having such a plan, this program takes the place of the haphazard appropriation system formerly used.⁶² The executive budget gives the governor the initiative in financial legislation, makes him, to a certain extent, responsible for

⁵⁵ Mathews, p. 227; Fairlie, Mich. Law Rev., X, 381.

⁵⁶ State Government, p. 227.

⁵⁷ Patterson, pp. 613-614.

⁵⁸ Mathews, p. 225; Mich. Law Rev., X, 383.

⁵⁹ W. F. Willoughby, *The Movement for Budgetary Reform in the States, 1918*; A. E. Buck, "The Present Status of the Executive Budget in the State Government." *Nat. Munic. Rev.*, VIII, 422-435.

⁶⁰ Patterson, p. 618.

⁶¹ Mathews, p. 331.

⁶² For the old method, see Munro, *Government of the United States*, pp. 511-512. For the executive budget in specific states, see Mathews, pp. 336 ff.

the wise distribution of state finances, and provides the legislature the needed information with regard to the passage of appropriation bills.⁶³

The actual position of the chief executive in the field of legislation cannot be fully appreciated by a mere enumeration of his constitutional and statutory powers. He exercises as has been noted in a few instances above, a great amount of power over legislation, due largely to his political and personal influence.

Whether rightly or wrongly, the governor is more and more held accountable by the people for the character of legislation enacted.⁶⁴ Quoting Mathews: "Since no one looms up in the legislature that can be held responsible, the governor, who stands off exasperatingly powerless, is made the scapegoat."⁶⁵ By "powerless" the above writer means "legally" powerless, for, in order to make his influence commensurate with his externally imposed responsibility, he may bring into play those extra-legal forces at his command growing out of his enumerated powers and duties.

When the governor is the leader of the majority party in the legislature, his personal relations with the members are great factors in producing the legislation desired by him.⁶⁶ He may use his patronage to advantage as well as conferences with prominent legislators of the two houses. He sometimes appears before his party caucus and before legislative committees in order to argue the need for certain laws.⁶⁷

⁶³ The ineffectiveness of the item veto without budget reform is well shown in Holcombe, p. 325; Wells, "The Item Veto and State Budget Reform." *Amer. Pol. Sc. Rev.*, XVIII, 782-791.

⁶⁴ J. M. Mathews, "The New Rôle of the Governor," *Amer. Pol. Sc. Rev.*, 1912, VI, 216-228; *ibid.*, "The New Stateism," *North Amer. Rev.*, 1911, CXCI, 808-815.

⁶⁵ *Ibid.*, "The New Rôle of the Governor," p. 223.

⁶⁶ W. F. Dodd, *State Government*, 1923, pp. 217-218; Munro, *op. cit.*, pp. 479-480.

⁶⁷ Appearing before the Democratic caucus soon after his election as governor of New Jersey, Woodrow Wilson said: "I am the only person in the whole state . . . to express approval or disapproval on behalf of all the people and I will express that approval or disapproval for the people by determining what we shall do." Arguing his policies for about three hours, the governor persuaded the conference unanimously to adopt his program; and, within a short time,

If the legislators prove recalcitrant, his threat of veto⁶⁸ and possible recourse to the public sentiment of the state by means of speeches and press interviews are prime factors in whipping them into line.⁶⁹

As has been said, the people look to the governor as the responsible representative of the whole citizen-body of the state. They look to him to secure the legislation for public benefit instead of for private interests. Not being able to secure such laws entirely by legal means, the governor may use his political and extra-legal influences.

The problem resolves itself into a choice between government by the direction of the governor, a legally recognized agent, or by the political boss. The new rôle of the governor is to act as the virtual boss of the state and shape the course of legislation for the general benefit. . . .⁷⁰

THE GOVERNOR'S EXECUTIVE POWERS

Notwithstanding that the governor exercises many powers in relation to the legislature, his chief duties are, nevertheless, executive, in the discharge of which he spends the greater part of his time.

In the present constitutions of the states, the governor is classed as an executive officer vested with the "chief" or "supreme" executive power of the state. To this is added the statement that it shall be his duty "to see that the laws are faithfully executed." But the courts and publicists have

the measures were enacted into law. David Lawrence in *Springfield Republican*, February 29, 1924. Quoted by Ogg and Ray, 1925, p. 693, note.

⁶⁸ If the governor menaces a member of the legislature by threatening use of veto, it is provided in the following constitutions that he shall be punished according to law and upon conviction forfeit the right to hold office of trust or honor in the state. Constitutions of North Dakota, III, 81; South Dakota, IV, 11; Wyoming, IV, 10. Kettleborough's *State Constitutions*, pp. 1029, 1261, 1532, respectively.

⁶⁹ "Governors as State Bosses," *New Republic*, March 17, 1926; "Executive Leadership," *New Republic*, August 14, 1915; "Control of Legislatures," Henry Jones Ford, *New Republic*, August 14, 1915; J. D. Barrett, "Executive Control of Legislation," *American Law Review*, XLI, 215-238, 384-406.

⁷⁰ M. A. Alexander, "The Development of the Power of the State Executive," *Smith College Studies in History*, II, No. 3.

almost uniformly held that the governor has little or no inherent executive power as the result of these grants.

In the case of *Field vs. the People*,⁷¹ the highest court of Illinois held that these grants confer no specific power upon the governor. In *Ex parte Holmes*,⁷² the court held that "there are no powers incidental to the executive character of a chief magistrate of this state unless they are obviously necessary to carry into effect some of the powers expressly given." Another case held that the chief executive has no prerogative powers, but only such powers as are vested in him by the constitution.⁷³

Charles A. Beard writes:⁷⁴

The formal powers enjoyed by the governor must be sought in the express terms of the Constitution. The legislature possesses every power and authority not denied to it, but the governor has no such high prerogative. The customary clause that 'the executive power shall be vested in a governor' bestows upon him practically no authority that is not explicitly conferred somewhere by the written instrument itself.

According to Dr. Goodnow:⁷⁵

Little if any power is to be regarded as vested in the governor as a result of the grant to him of executive power. In order to find out exactly what is the position of the governor in the system of government adopted in any one of the states of the American Union, we have to look through the constitution of that state for the powers which are specifically and expressly granted to him. . . . For the State courts have not derived, as has the Supreme Court of the United States, any very large powers from such a general power or duty to see that the laws be faithfully executed. In other words, the principal of narrow construction is more commonly adopted with regard to the powers of the governor than with regard to those of the President.

It will thus be seen that the word "chief" or "supreme" operates to limit rather than to extend the governor's execu-

⁷¹ 3 Ill. 79 (1840).

⁷² 12 Vermont 631, 635. Quoted by Goodnow, *Principles of the Administrative Law of the United States*, p. 74.

⁷³ *Richardson v. Young*, 125 S. W. 664, 122 Tenn. 471 (1910). The same point is held in *Fox v. McDonald*, 101 Ala. 51 (1892); and *Clark v. Boyce*, 20 Ariz. 544 (1919).

⁷⁴ *American Government and Politics*, p. 492.

⁷⁵ *Principles of the Administrative Law of the United States*, p. 95. Similar statements are made in Mathews, J. M., *Principles of American State Administration*, p. 80; *ibid.*, *State Government*, p. 229; Dodd, *State Government*, 1923, p. 240.

tive power. "It implies that, although the supreme or highest executive power is vested in the governor, there are also other subordinate executive powers vested in other officers, over whom the governor may not necessarily exercise any control."⁷⁶ The position of the governor is, therefore, inferior to that of the President in the relation that they both bear to the respective administrations.⁷⁷

In carrying out the clause of the constitution "to see that the laws be faithfully executed," the governor is forced to rely upon: the chief officers of the executive department who are usually elected by popular vote; the locally elected sheriffs, prosecuting attorneys, city officials, and judges of the state courts.⁷⁸ To execute the law properly, the chief executive should have means of exercising control over these officers: a free hand in their appointment, supervision and direction, and the power of removal and suspension for nonfeasance or malfeasance. In most of the states, however, the governor is given no such complete control over the law-enforcing officers.

Although the appointing power of the governor has increased appreciably, especially with regard to the newer agencies of administration, his importance in administration has not correspondingly increased in the majority of the states.

In the first place, his power of appointment and removal was not made commensurate with his nominal responsibility for the conduct of state administration; secondly, in many states, the governor was hampered by an unduly short term of office; and finally, the administrative services were not correlated and integrated into a single harmonious system.⁷⁹

⁷⁶ Mathews, *Principles of American State Administration*, p. 80. Officers of the executive department other than the governor are usually: secretary of state, attorney-general, auditor, treasurer, and lieutenant-governor.

⁷⁷ The principal exception to the rule of narrow construction is stated in *Keenan v. Perry*, 24 Texas 253, where it is held that the governor may exercise a power, which, though not granted expressly, or by necessary implication, is nevertheless incidental to an expressly granted power. Cited by Mathews, *op. cit.*, pp. 80-81.

⁷⁸ Ogg and Ray, *Introduction to American Government*, p. 694. See also, Dodd, ch. xi; Mathews, *State Government*, chs. viii and xv, for material on the enforcement of state policy.

⁷⁹ Holcombe, p. 297.

The appointing power of the chief executive is conferred by both constitution and statute. Usually, in the constitutions there is a clause specifying certain offices to which the governor may appoint. Then, too, there is commonly a clause authorizing him to appoint all officers whose appointment or election is not otherwise provided for. Other appointments are given to him by legislative authorization.⁸⁰

Although the governor appoints a large number of officers, his power does not as a rule extend to the more important executive officers or heads of the departments.⁸¹ These officers are usually elected on the same basis as the governor himself. Having their duties prescribed in the constitutions and laws, they are legally independent of the chief executive, which tends to disintegrate administrative control; and, the only degree of harmony is that reached through the channels of the political party. Their relation to the governor is thus quite different from that of the heads of the departments in the national government to the President.⁸² Besides the officers of the executive department, two other classes of officials who execute state law are usually withdrawn from the power of the governor to appoint and remove: judicial officers of the state, and local officers charged with the enforcement of state law.⁸³

The greater part of the governor's appointing power is derived from his power to appoint to a numerous list of boards and commissions, created within recent years.⁸⁴ The governor, however, has not a free hand in selecting officials for these positions since the most important of his appointments are subject to confirmation by the senate, and limited by civil service rules,⁸⁵ and statutes providing for fixed and

⁸⁰ Ogg and Ray, p. 695.

⁸¹ Mich. Law Rev., X, 460.

⁸² Ibid., pp. 459-460; Dodd, p. 239; Mathews, State Government, pp. 231-232.

⁸³ Finley and Sanderson, American Executive and Executive Methods, pp. 111-112.

⁸⁴ When new offices have been created by statute, the natural tendency has been to vest their appointment in the governor, usually with the consent of the senate. Dodd, p. 242.

⁸⁵ This is a minor limitation since the civil service rules apply chiefly to minor officers not chosen by the governor. It really

overlapping terms.⁸⁶ All these limitations tend to restrict the full exercise of the governor's discretion in selecting appointees to assist him in the enforcement of the laws and to weaken his control over them. To quote Mathews: "... the present system of appointment is a compromise between executive and legislative control, which, in practice, often transfers the real control to the invisible powers behind the governor."⁸⁷

While it has been definitely settled in the national government that the power to appoint implies the power to remove officers, no such rule has been established in the states.⁸⁸ Although the governor's power to remove is still less than that of the President, there has been a tendency to increase it in recent years by constitution and statute.⁸⁹ This is a step towards making the governor the real, instead of the nominal, head of the administration. However, as Mathews writes:⁹⁰

Under the existing method of selecting the heads of the state executive departments, and the system of decentralized enforcement of state law . . . the governor cannot fully assume the position of real head of the administration by virtue of his power of removing his appointees.

In spite of the fact that the governor may exercise the removal power in a great number of cases, on the whole it is comparatively limited. Two causes prevent the free exercise of this power: first, the withholding of the grant altogether with respect to certain officers; and, secondly, the placing of restrictions upon the methods which must be used.⁹¹

strengthens the governor's position by regulating subordinate appointments under the elective officers through the Civil Service Commission appointed by the governor. Mich. Law Rev., X, 460.

⁸⁶ Mathews, p. 232; Ogg and Ray, pp. 696-697; Holcombe, p. 298.

⁸⁷ State Government, p. 233.

⁸⁸ *Field v. People*, 3 Ill. 79 (1840); *State v. Rhame*, 75 S. E. 881 (1912); *McDonald v. Brunett*, 92 S. C. 469 (1912); *Nicholas v. Thompson*, 5 Rob. (La.) 367 (1843). See *Myers v. U. S.* and cases cited (252 U. S. 52). Contra: *Keenan v. Perry*, 24 Texas 259 (1859). The power of the governor must generally be derived from specific provisions of the constitutions or the statutes. Mathews, p. 236; Bates and Field, p. 268; Goodnow, p. 101; Finley and Sander-son, p. 93.

⁸⁹ Mathews, p. 235.

⁹⁰ State Government, p. 235.

⁹¹ *Ibid.*, p. 236.

The principal elective executive officers and state judges may, as a rule, be removed only by impeachment.⁹² Unless expressly authorized, the governor may not summarily remove officers whom he appoints.⁹³ In the majority of cases, he may remove only for cause, such as incompetency, neglect of duty, or malfeasance in office; and then only after notice and opportunity to be heard.⁹⁴

The power of the governor, generally found in the constitutions, to see that the laws be faithfully executed and to require information in writing from the officers of the executive department, gives him some degree of supervision over the administration. Nevertheless, these provisions have not in practice operated to give the governor any real effective or continuous control.⁹⁵ The departmental heads, judges, and local law-enforcing officers being generally elective and not directly responsible to the governor, exercise a degree of independence which is not conducive to effective gubernatorial control.⁹⁶ Legally these officers are in such a position, that, in order to compel them to act, the governor must apply to the courts in the same manner as a private citizen may do.⁹⁷

The supervision of the governor over the state boards and commissions, to which he makes appointments, has been seriously impeded by the multiplicity and lack of systematic organization of such agencies.⁹⁸ The only effective means of

⁹² In Michigan, however, the governor may, during recess of the legislature, remove any public officer; and, in N. Y. he may suspend the elected state treasurer. Locally elected officers are not usually removable by the governor, but in N. Y., Mich., and Wis. he may remove certain local officers such as the sheriff and district attorney. Bates and Field, p. 269; Dodd, pp. 286-288.

⁹³ Even when authorized by law to suspend or remove, the governor is sometimes restricted through the requirement that removals must have the approval of the senate. Mathews, p. 237.

⁹⁴ Ekern vs. McDonald, 154 Wis. 157 (1913). For the procedure in these cases, see Mathews, pp. 236-237.

⁹⁵ Ibid., pp. 233-234.

⁹⁶ The duties of these officers are largely regulated by the constitutions or laws. Mathews, Principles of American State Administration, p. 97.

⁹⁷ State *ex rel.* Fleming v. Crawford, 28 Fla. 441 (1891). Cited by Dodd, p. 240.

⁹⁸ Dodd, p. 245; Mathews, State Government, p. 234.

controlling these bodies in order to force compliance is the power of removal.

Of the various means of administrative control . . . the power of removal is by far the most potent. Upon possession of this power the governor must largely base his direction and control of the administration. . . . The energy with which the state business is managed is largely dependent upon the extent to which this power is conferred upon the governor.⁹⁹

In the control of the administration through the issuance of executive ordinances or regulations the governor's power is closely limited to such regulations as are authorized by statute.¹⁰⁰ The legislatures have usually preferred to regulate in detail all matters which need regulation, or to grant the ordinance power more freely to the various boards and commissions than to the governor.¹⁰¹ Thus, in contrast with the President, the governor's ordinance-making power is very small and inferior.¹⁰²

Neither legislative nor administrative, *in sensu strictiore*, there are certain miscellaneous powers and functions, for the most part not the least unimportant, which commonly are given to the chief executive as *chef d'état*.¹⁰³

In most of the states, the governor is constituted commander-in-chief of the militia. In this respect, he is the military head and personifies the armed power of the state, using the militia to enforce the law in certain extreme cases, to suppress riot and rebellion, and to repel invasion.¹⁰⁴ As a survival of the royal prerogative to dispense justice and mercy, the power to grant pardons, reprieves, and commuta-

⁹⁹ Ibid., p. 238.

¹⁰⁰ The governor generally has power to issue civil service rules and pardon regulations. Mich. Law Rev., X, 464; Goodnow, p. 105; Mathews, Principles of American State Administration, pp. 67-69.

¹⁰¹ Ibid., p. 69.

¹⁰² Compare, James Hart, The Ordinance Making Power of the President.

¹⁰³ For a full discussion of these powers, see Mathews, op. cit., ch. v.

¹⁰⁴ Mathews, State Government, pp. 239 ff.; Mich. Law Rev., X, 465 ff. For restrictions on the military power, see Art. I, sec. 10, par. 3, of the United States Constitution. The governor's discretion as to the expediency or timeliness of calling out the militia is final and not subject to review. *Franks v. Smith*, 142 Ky. 232 (1911).

tions of sentence is vested in the governor subject to certain exceptions and restrictions.¹⁰⁵

The governor is the official representative of the state in its relation with the Federal Government; hence, he issues writs for special elections to fill vacancies in the House of Representatives, appoints to vacancies in the federal senatorship from his state, during the recess of the legislature thereof, and transmits ratifications of constitutional amendments.¹⁰⁶ He also represents the state in its dealings with other states of the Union, sends and receives communications and exercises certain functions regarding the extradition of fugitives from justice.¹⁰⁷

In the case of vacancies occurring in state elective offices, the chief executive is frequently empowered to fill them either by appointment for the unexpired term or to issue the call for special elections. Sometimes, also, the governor is authorized to issue the call for special elections for the organization of new counties in the state.¹⁰⁸

The legislature may confer upon the governor additional functions to those imposed by the constitution. As a result, he is commonly constituted *ex officio* member of various state boards and commissions.¹⁰⁹

Finally, as Munro states:

... he attends a large number of official functions, receives distinguished visitors who come to the state capital, reviews parades, signs documents by the hundreds, holds conferences with party

¹⁰⁵ W. W. Smithers, "Nature and Limits of the Pardoning Power," *Journal of Criminal Law and Criminology*, I, 549-562. Cited by Mathews, *Principles of American State Administration*, p. 133. Also, "Pardon by the Governor of Direct Contempt of Court," *Illinois Law Rev.*, XXI, 379-380; "Power of the Governor to Pardon for Criminal Contempt," *Minn. Law Rev.*, X, 436; Goodnow, pp. 97-98.

¹⁰⁶ McLaughlin and Hart, *Cyclopedia of American Government*, III, 383.

¹⁰⁷ Constitution of the United States, Art. IV, sec. 2, par. 2; *Mich. Law Rev.*, X, 468. In case of a suit against another state, a statute authorizing it is usually passed by the legislature; but the governor, generally on his own initiative, is permitted to institute any such suit for the protection of his state. Munro, *Government of the United States*, p. 490.

¹⁰⁸ Mathews, *Principles of American State Administration*, p. 129.

¹⁰⁹ *Ibid.*, pp. 130-131.

leaders, listens to applicants for appointments (and to their insistent friends), attends a conference of all the governors once a year, and makes a speech somewhere every few days.¹¹⁰

ADMINISTRATIVE REORGANIZATION

By the middle of the nineteenth century, as we have seen, the governor had been stripped of most of his administrative authority and had become primarily a legislator. The subsequent rise of the new agencies of administration, as a result of the changing social and economic conditions, although extending his appointing power, did not operate to place the governor in the rôle of administrative chief.

Popular election of the executive and law-enforcing officers, other than the governor, was the first decentralizing factor in state administration. This was followed by the haphazard creation of numerous boards and commissions to meet the exigencies arising from the increase of state functions. Although it was usually within the power of the chief executive to appoint to these new agencies, his control over them was slight, due to the necessity of senatorial confirmation, overlapping of terms, multiplicity of the offices, lack of coördination among the services, and most of all, inadequate removal power. Thus, the independence of the elective officers and the uncorrelated and unsystematic organization of administrative agencies caused a diffusion of responsibility, as well as a lack of effective control, whether by legislature, governor, or the people; with the added consequences of waste and inefficiency, due for the most part to duplication of effort and overlapping of function. Needless to say, such a chaotic condition facilitated the sinister operation of the "invisible government" and greatly increased the cost of government.¹¹¹

¹¹⁰ Government of the United States, p. 490. Ex-governor Smith, of New York, once testified that he was compelled to spend approximately seventy-five per cent of his time doing clerical work: signing papers, listening to reports, etc.; matters which might well have been delegated to a competent subordinate. A. E. Smith, "How We Ruin Our Governors," *National Municipal Review*, X, 277-280.

¹¹¹ "In his discouragement over any attempt to control the state administrative organization, the governor is likely to give up the

It was not until the rising costs of government began to be felt, in the early years of the present century, that the condition of the state governments mentioned above began to attract attention. It was then realized that the disorganized and inefficient state of affairs had an important bearing upon the deplorable financial condition.

One of the earliest and most important of the research organizations for the scientific study of administrative and other governmental problems was President Taft's Efficiency and Economy Commission of 1910, headed by Dr. F. A. Cleveland.¹¹² In the next few years, the efficiency and economy movement spread to the states where commissions were organized.¹¹³ As a result of these numerous investigations, the parallel movements for administrative reorganization and for budgetary reform were set in motion, "... movements which have been outstanding developments in state governments during recent years."¹¹⁴

Without attempting to present in detail the program of administrative reorganization, the general principles and standards may be summarized as follows:¹¹⁵

administrative task as a hopeless one, and to turn to the field in which he has greater power, that of legislation. What we have done is to set up a so-called chief state executive with more power over legislation than over executive matters. . . . Legislation is more spectacular, but efficiency in government depends upon orderly administration." Dodd, *State Government* (1928), pp. 235-236.

¹¹² 62d Cong., 2d sess., H. Docs. Nos. 458, 854 (1912).

¹¹³ See Raymond Moley. *The State Movement for Efficiency and Economy*, 1918.

¹¹⁴ Holcombe, *State Government*, p. 304. For full discussions of the reorganization movement, see *ibid.*, pp. 304-315; Dodd, pp. 238-271; A. E. Buck, "Administrative Consolidation in State Governments," *National Municipal League pamphlet*, 3d ed., 1924; J. M. Mathews, "State Administrative Reorganization," *Amer. Pol. Sc. Rev.*, XVI, 387-398; Dodd, "Reorganization of State Government," *West Virginia Law Quarterly*, XXX, 262-276. The movement for budgetary reform is summarized in *Municipal Research*, number 91 (1917), including a bibliography. See, also, W. F. Willoughby, *The Movement for Budgetary Reform in the States*, 1918; F. A. Cleveland and A. E. Buck, *The Budget and Responsible Government*, 1920.

¹¹⁵ This outline is based upon the programs in A. E. Buck, *op. cit.*; Holcombe, pp. 304-306; and Patterson, pp. 667-682. It represents the crystallization of authoritative opinion.

(1) FUNCTIONAL DEPARTMENTALIZATION OF ADMINISTRATIVE AGENCIES.

All administrative agencies should be consolidated into a few departments, each comprehending a major function of government. The internal organization of the departments should allow closely related activities to be grouped under appropriate bureaus and divisions.

(2) FIXED AND DEFINITE LINES OF RESPONSIBILITY FOR ALL DEPARTMENTAL WORK.

Each department should be headed by a single director, appointed and removed at gubernatorial discretion. The bureau and division chiefs should be, in turn, appointed and removed according to the merit system by the department heads. Hence, the line of responsibility would be from bureau or division chief to the department head, to the governor, who would be responsible to the people for the administration. Then, too, the terms of the department heads should not be longer than that of the governor, who should have a tenure of four years. Finally, boards or commissions should not be used for strictly administrative purposes, but only where quasi-judicial, quasi-legislative, advisory, or inspectional functions are involved may they be attached to departments.

(3) THE ESTABLISHMENT OF AN EFFECTIVE SYSTEM OF FINANCIAL CONTROL.

This endeavors to secure economy by means of executive control in the allotment and use of funds and a unified program of state administrative activities. The executive should be made responsible for budget planning, and, as a necessary concomitant, should have the power of estimate revision. Executive responsibility should also extend to budget execution by means of control over administrative accounting, centralized purchasing, and determination of expenditures for personnel.

In order to effect such sweeping changes, a complete reorganization, as outlined above, could not take place without constitutional amendment, a substantial barrier in those states where the amending process is difficult. Hence, the recourse to legislative enactment. Even this expedient, however, is subject to obstacles in the form of: 1, objections from the politicians fearing diminution of patronage; 2, office-holders fearing loss of their positions; and, 3, the old dread of executive tyranny. In consequence, reorganization has failed to reach all of its objectives. The difficulty in amendment and the various obstacles mentioned above comprise the chief reasons for the great variations of reform in the several states. As Holcombe says, however, the existing practices may be classified as follows: 1, piecemeal consolidations; 2, reorganization without materially increasing the power of

the governor; and, 3, reorganization increasing the administrative power and function of the governor.¹¹⁶

In no state has complete administrative reorganization taken place, but almost half of the states have adopted some sort of reform. Piecemeal reorganization has been brought about in a number of states involving a few consolidations of related administrative agencies.¹¹⁷ The reorganizations effected in New Jersey, Wisconsin, and Michigan have provided a certain amount of departmental coordination, but do not provide for an integrated and responsible system and fail to make the governor the responsible head of the administration. The introduction of the short ballot, however, registers a distinct advance.¹¹⁸

Another group of states, of which Illinois (1917), New York (1925), and Virginia (1928) are the outstanding examples, provide the most comprehensive reorganizations, designated to make the governor the directing and responsible head of an integrated administrative system.¹¹⁹ Besides the consolidation of the administrative services into related departments, the increased control granted to the governor by means of enlarged appointment and removal power and budgetary control, the amendments in New York and Virginia introduced the short ballot. This reduced the number of elective officers to four and three respectively. Although the result of legislative action and therefore not affecting the constitutionally elected officers, the comprehensive Illinois reorganization has worked well in practice and has been the model upon which many of the other plans have been based.

Although, in all reorganization plans, there are various defects and omissions, as well as striking advantages, the ques-

¹¹⁶ Holcombe, p. 306.

¹¹⁷ *Ibid.*, pp. 306-307.

¹¹⁸ *Ibid.*, pp. 307-310; Dodd (1928), pp. 239-245; Paterson, pp. 680-681.

¹¹⁹ See J. M. Mathews, "Administrative Reorganization in Illinois," *Nat. Munic. Rev.*, IX, 737-756; Governor F. O. Lowden, "Reorganization in Illinois and its Results," *Annals* (1924), CXIII, 155-161; F. C. Crawford, "New York State Reorganization," *Amer. Pol. Sc. Rev.* (1926), XX, 76-79; R. H. Tucker, "The Virginia Reconstruction Program," *Nat. Munic. Rev.*, XVII, 673-680.

tion is: Has State Administration been improved and rendered more efficient and economical? Holcombe says:¹²⁰

The answer to this question will depend upon many factors, such as the thoroughness of the reorganization scheme, the character and ability of the administrative personnel and especially the governor, the presence or absence of other related reforms such as the executive budget system, adequate civil service regulations, the centralized purchasing of supplies, etc. After a due allowance is made for these factors, the consensus of opinion among careful students is that administrative reorganization and consolidation have generally produced increased efficiency and economy, although the increase has probably not been as great as some of its advocates had anticipated.

Concrete evidences of improvements have been noted in several of the states where reorganization plans have been worked out. A competent observer in Ohio is of the opinion that the reorganization in that State has been a "qualified success."¹²¹ Professor Walter F. Dodd, who had the opportunity to observe the working of the Illinois system since 1917, says:¹²²

Distinct improvements in the state governmental service as a whole were made during the administration of Governor Lowden. Since 1921, some of this gain has been lost, but conditions have not been as bad as under the disorganized system before 1917.

One of the major results of the more complete reorganizations has been greatly to augment the powers and functions of the governor. We have seen that, in the nineteenth century the governor was constituted the "chief executive" armed with the "executive power" of the state; but this was more nominal than real. We have seen, too, that the governor, becoming discouraged in his attempts to control the state administrative system, turned to the field in which he had greater actual power, that of legislation. The American state constitutions had set up a so-called chief executive with more power in legislation than in executive affairs. His

¹²⁰ State Government, p. 315.

¹²¹ James K. Pollock, Jr., "Four Years Under the Ohio Reorganization Code," Nat. Munic. Rev., XIV, 554.

¹²² State Government (1928), p. 266. For intelligent criticism of the various reorganization plans, see F. W. Coker, "Dogmas of Administrative Reform," Amer. Pol. Sc. Rev., XVI, 399. See, also, W. H. Edwards, "The State Reorganization Movement," Dakota Law Rev., I, nos. 1 and 2; II, nos. 17 and 103.

task from the administrative viewpoint was largely a hopeless one.¹²³ In recent years, however, a strong tendency has developed in the states toward making the governor more responsible for the work of the administration; and, in a few of the states, at least, this officer has been given so much power over the administrative branch of the government that he may be said to be truly an administrator-in-chief.

¹²³ Dodd (1928), p. 236.

CHAPTER II

THE COLONIAL EXECUTIVE OF MARYLAND

Any study in the governmental history of Maryland would be incomplete and imperfectly developed if no mention were made of the Colonial Period, a formative period of governmental institutions and practices. The political agencies born in the early years of Maryland history were the mould in which our present state institutions have been fashioned, and had a profound and lasting effect upon the departments of government established by the Constitutional Convention of 1776. Thus, the first constitution provided for a governor and council, a bicameral legislature, and a system of courts, all having their origin in the provincial government.

Especially is it of interest to note that the office of governor, the original form of the executive found in America, and which served in part as a model for the other kinds of American executive authority, was continued not only in Maryland, but in the other states as well. In truth may the present state chief executive be said to be the descendant of his colonial ancestor. Quoting an eminent authority: "The present position of the state governor is a noteworthy example of the influence of past conditions and of the past state of public feeling upon the character of present political organization."¹ Therefore, in concurrence with the author quoted, in order to "render more intelligible the present organization of state executive power, it is desirable to consider briefly the office of the colonial governor."²

Before proceeding to consider the powers of the colonial governor of Maryland, it has been thought pertinent to reflect first upon the source of these powers: the Charter of the Province of Maryland, issued June 20, 1632, to Cecilius Calvert, second Lord Baltimore and first proprietor.³

¹ J. M. Mathews, *Principles of American State Administration*, p. 25.

² *Ibid.*

³ Translated from the Latin in J. L. Bozman, *History of Maryland*, II, 9-12. "It is in the colonial charter that we find the germ of American Constitutional Law." Simeon E. Baldwin.

The Charter to Lord Baltimore contained the most ample rights and privileges ever conferred by a sovereign of England.⁴ It erected Maryland into a palatinate,⁵ reserving only the feudal supremacy of the Crown. The proprietor was made absolute lord of the land and water within the confines of the province, could erect towns, cities, and ports, make war, declare martial law, call the whole population to arms, levy taxes and duties, establish courts of justice, appoint judges, and other civil officers, execute the laws, and pardon offenders. He could erect manors with courts baron and courts leet, confer titles and dignities. He could make laws with the assent of the freemen, and, without their assent, make ordinances not impairing life, member, or freehold. He could found churches and chapels according to the ecclesiastical laws of England and appoint their incumbents. All of this territory, with these royal powers and rights, "jura regalia," was held of the Crown in common free socage, by the delivery of two Indian arrows annually at the Windsor Palace, and one-fifth of all gold and silver mined. In regard to taxes and other levies, the king bound himself and his successors, that at no time would they "impose . . . any impositions, customs, or other taxations whatsoever . . . upon the inhabitants of the province . . . for their goods, lands, or tenements within the . . . province . . ." ⁶ In case of any such demand, the charter expressly declared that this clause might be pleaded as a discharge in full.⁷

The executive, legislative, and judicial powers conferred upon Lord Baltimore and his heirs by the charter were, therefore, quite extensive, giving him virtually all the powers of a prince, subject alone to the overlordship of the king. This charter, as drawn up, gave most extensive functions to the

⁴ William Hand Browne, *Maryland, the History of a Palatinate*, p. 18.

⁵ For excellent descriptions of palatinate powers and prerogatives, see J. V. L. McMahon, *An Historical View of the Government of Maryland*, I, 157; and S. T. Lapsley, *The County Palatine of Durham*.

⁶ Charter of Maryland, sec. XX.

⁷ *Ibid.*

head of the government with all the jurisdiction necessary for efficient internal administration.

In the colony of Maryland, as was true in the other proprietary provinces, the powers of the proprietor were delegated to a deputy, the governor or lieutenant-general. This delegation of power was given in the form of "Commissions," "Instructions," or "Ordinances," from the proprietor which described in some detail the functions of the office and the powers appertaining thereto. They comprised the constitution of the province. From time to time additional powers and duties were given to conform with the political development of the colony in the form of supplementary "Instructions" or of personal letters. The governor was expected to report all of his actions to his superior and to give any information requested of him.⁸ He held his office, like all of the other officials within the province, at the proprietor's pleasure and was in no respect legally independent of him. This legal control, however, was often loosely exercised. Every public act done by the governor was executed in the name and by the authority of his superior.⁹

The proprietary governor of Maryland had a dual position: he was the centre of all local administration, the chief executive of the province; and he was the agent of a higher authority, the guardian of the interests of the proprietor. In addition to his political functions, he was the manager of an essentially commercial enterprise. The early governor was not the executive of a settled political community; therefore, in the first stages of colonization, the most important of his duties was the superintendence of the general work of settlement; such as the granting of land,¹⁰ development of natural resources, and the maintenance of friendly relations with the Indians. The political aspects of his office were overshadowed, or at least strongly modified, by the peculiar

⁸ H. L. Osgood, "The Proprietary Province as a Form of Colonial Government," *American Historical Review*, III, 34.

⁹ *Ibid.*, p. 35.

¹⁰ Bozman, II, 36.

situation in which he was placed.¹¹ It was inevitable, then, in the beginning, that his political powers should be somewhat loosely defined. Not until three years after the first colonization was there any systematic governmental organization.

GOVERNMENTAL ORGANIZATION

As a basis upon which to begin an account of the powers of the governor, it is essential that a brief summary be given of the organization of the government within the province.

In its fullest development, the government was composed of an executive: consisting of a governor acting with the advice of a council appointed by the proprietor, and through the latter's and the governor's appointed officers;¹² a provincial legislature made up of an elected lower house and the appointed council sitting as an upper house; and a judiciary composed of a provincial court held at the seat of government, the various county courts, and the justices of the peace.

In the early years the assembly consisted of the governor, council, and freemen, all sitting as a single house and comprising the provincial assembly.¹³ Over the constitution of this assembly the governor had full power and summoned all

¹¹ The governor received instructions not only for the government of the colony, but for the management of the proprietor's private stock farm. Calvert Papers, Maryland Historical Society Fund Publications, No. 28, pp. 194, 214.

¹² The executive council was a body usually consisting of seven officers appointed by the proprietor on recommendation of the governor to assist, advise, and, in a measure, to check the latter in the exercise of his executive functions. N. D. Mereness, *Maryland as a Proprietary Province*, pp. 177-181. The commissions of 1644 and 1666 expressly state that the advice of the council should be taken in important matters. III Archives, 545. In the royal commissions, a clause states that the governor should not act in emergencies without the council's advice. VIII Archives, 279-280. The commission of 1751 required the council's advice in calling the assembly, as well as in emergencies. XXVIII Archives, 520 ff. Some of the governors sought advice of the council in order to justify their own acts or to shift responsibility. VI Archives, 428 ff. For the function of the council in judicial matters, see below, pp. 44-45. See also, the Commission of the Council of State in Maryland, in Bozman, II, 649-650.

¹³ Mereness, *op. cit.*, part 2, ch. ii.

members by personal writ. This early form, however, did not survive for any great length of time, for in 1650 the assembly became definitely bicameral: the governor and council sitting together as an upper house, and the elected representatives of the freemen forming the lower house.¹⁴ "Henceforth," says Mereness, "the upper house was to stand for the rights and interests of the lord proprietor, while the lower house stood for the rights and interests of the people. No law could be made or repealed without the consent of both houses, of the governor and the lord proprietor."¹⁵

POWERS OF THE GOVERNOR

The position of the governor as the chief authority in the province will be made clear if one notes the powers conferred upon him. In the first extant commission for the government of the colony, that of April 15, 1637, to Leonard Calvert, we find them stated at length.¹⁶ This was really an ordinance of government, for it contained commissions for governor, council, and secretary, as well as directions for calling the first assembly. Later commissions were an expansion and differentiation of this one, not varying to any great extent the principal powers of the governor.¹⁷

Generally speaking, the early governor of Maryland exercised legislative and judicial powers as well as those executive in character. Although an absolutely clear differentiation of this wide authority is hardly possible, for the purpose of arrangement, an attempt will be made in the present description to allocate the powers, so far as possible, into their respective categories.

EXECUTIVE POWERS

Historically, one of the first departments of executive power to assume prominence was the military power. In the lan-

¹⁴ *Ibid.*, pp. 196-197.

¹⁵ *Ibid.*, p. 197.

¹⁶ III Archives, 49-55; 108-116; 151-158.

¹⁷ Other commissions and instructions, *ibid.*, pp. 201-209; 323-324; 391-392; 439; VIII, 200, 230, 240, 253, 271, 332-333; 380; XXV, 353; XXVIII, 67; XXXI, 8; XXXII, 274, 283.

guage of the commission of 1637, the governor was declared to be ". . . admiral, chief captain and commander, as well by sea as land, of our said province of Maryland and the islands to the same belonging . . . unto him the chief commandment and absolute authority about and in all matters of warfare by sea and land to execute and administer the same to the resistance of the enemy . . . " ¹⁸ In general, the provisions of the later commissions did not vary from this sweeping stipulation to any appreciable extent. ¹⁹ Thus, the governor was endowed with the general power to raise and equip a military and naval force; to appoint, remove, and instruct all military officers; and to declare martial law. ²⁰ In practical application, however, the executive was dependent upon the action of the assembly in voting supplies; so that unless the proprietor himself supported a military force, little could be done without an effective act of assembly to provide for a strongly organized militia.

Although not expressly provided in the commissions and instructions, the governor exercised two important functions in external relations: relations with the Indian tribes, and with other colonies. Neither in the charter nor in the commissions was there any express grant of power to make treaties, but the fact that treaties *were* concluded with the Indians in early times indicates that this power was assumed by natural implication from the military clause; and it was acquiesced in by the proprietor and crown. ²¹

Besides relations with the Indians, the governor impliedly represented his province in its relations with the other colonies of Great Britain. Among the more common contacts

¹⁸ Commission of 1637, III Archives, 49-50.

¹⁹ See Commission to Copley, first Royal Governor of Maryland, June 27, 1691, VIII Archives, 263; to Robert Eden, in 1768, XXXII, 275.

²⁰ A complete account of the military power and limitations thereon may be found in N. D. Mereness, *Maryland as a Proprietary Province*, ch. iv, especially, pp. 310-319. See also, *Charter of Maryland*, sections XII and XIII. Compare with the power of the governor in other colonies. E. B. Greene, *The Provincial Governor*, pp. 98-106.

²¹ Scharf, *History of Maryland*, I, 252, 290, 426.

were those leading to the determination of boundaries,²² extradition of criminals,²³ and the general questions arising from concerted military operations of the colonies during the inter-colonial wars.²⁴

The essentially executive power of appointment to office was naturally intrusted to the governor. The commission of 1637 states that the governor shall have power to "... appoint and constitute officers and ministers for the preservation of the peace, administration, and execution of justice, and for doing and executing of all other things whatsoever which belong to the establishing and governing of a good and happy commonwealth" The commission of 1648, besides the above, continues: "... excepting councillors and such other officers as shall be . . . immediately appointed by commission or warrant from us" ²⁵

In none of the governors' commissions was there any all-inclusive power given to appoint councillors. The proprietor not only reserved to himself the appointment of these officials and the chief executive officers, such as secretary, commissary general, judges of the land office, and attorney general, but he defined their powers and required information from them.²⁶ As a matter of fact, however, appointments to these and all offices were usually made in accordance with the governor's recommendations;²⁷ and in the later commissions the governor was given power to appoint members of the council in order to maintain their number to seven, subject to confirmation by the proprietor.²⁸

²² III Archives, 496. There grew up a custom of referring these questions to commissioners chosen by the assembly, thus restricting the governor's power.

²³ IX Archives, 335-336.

²⁴ VI Archives, 315. A council of war was held during one of the intercolonial wars at which the governors of Mass., N. Y., Pa., and Md. were present. (The term "intercolonial wars," as used in the various histories of the period and in this study does not connote "wars between the British colonies," but the wars between the British and French in America in which the colonials of both countries took part.)

²⁵ Bozman, II, 643.

²⁶ Mereness, p. 158. These officers were usually members of the executive council. Ibid., p. 177.

²⁷ Ibid., pp. 160-161.

²⁸ Commission to Stone, Bozman, II, 647; to Copley, VIII Archives, 264.

The appointment of civil officers was a subject of great importance. From the title of chief magistrate and the power to appoint judicial officers proceeded the governor's power as leading conservator of the peace. He was empowered to appoint judges, sheriffs, constables, justices of the peace, and other officers to aid in preserving order and in fulfilling administrative needs. The consent of the council was not legally required, but it became the custom to consult it in making appointments.²⁹

The authority to name military officers was quite plainly a matter in which the governor was supreme and independent. In the exercise of this right, derived from his position as chief captain, his discretion was final and required no consent of the council.³⁰

In terms almost as liberal, the governor was granted the removal power. He could suspend councillors for cause, pending confirmation thereof by the proprietor; and could remove all other officers and fill vacancies.³¹ As in the case of appointment, the governor usually consulted his council in exercising this power.

Among the minor executive functions of the governor, the power of pardon was perhaps the most important, a common prerogative of all the colonial executives. The proprietary governor of Maryland, before 1689, could pardon and remit all pains, forfeitures, and penalties, except in cases of treason or to certain persons designated by the proprietor.³² During the royal period, the pardoning power was restricted to cases not involving treason or wilful murder. In these excepted cases, he could reprieve until the royal pleasure could be made known. In regard to remission of fines and forfeitures, he was limited to those cases not exceeding ten pounds in value.³³

²⁹ VIII Archives, 21.

³⁰ III Archives, 75, 86, 102-103, 117-118, 124, 528; V, 10-13, 113, 120; VIII, 45, 56, 66-67.

³¹ V Archives, 80, 85, 109, 117; XXVIII, 142. Copley's Commission, 1691, permitted him to dismiss any officer for cause. VIII Archives, 276.

³² III Archives, 203, 205-207.

³³ VIII Archives, 275.

It seems probable that the rule of the royal governor was continued after the restoration of the province to Lord Baltimore in 1715.³⁴ In the exercise of the power of pardon, the action of the governor was independent of any other officer in the province, not requiring concurrence of the council.³⁵

In addition to the above, the governor was given the right to appoint places for public ports, markets, and fairs; and to appoint all officers for the same. He was keeper of the great seal, issued all grants of land, licenses, writs, proclamations, charters of incorporation, and signed all public deeds and acts.³⁶

Concerning ecclesiastical affairs, the charter provisions gave to the proprietor the patronages and advowsons of all churches together with the right to establish and build them.³⁷ In none of the early commissions, however, or in the extant instructions, do we find any definite mention of the governor's authority in these matters. The proprietor seems to have exercised his ecclesiastical jurisdiction directly, although not to any great extent did he invoke it at all. On the other hand, after the establishment of a state religion under the royal government, we find the governor endowed with great power in this respect;³⁸ namely, presenting, inducting, or appointing ministers.³⁹ At one time, the governor and council constituted an ecclesiastical court.⁴⁰ In the later colonial period, however, the proprietor reserved to himself the general control over the clergy.⁴¹

RELATION TO THE JUDICIARY

The Charter of Maryland authorized the proprietor to
“ . . . do all and singular other things belonging to the com-

³⁴ Greene, p. 125.

³⁵ *Ibid.*, p. 126.

³⁶ III Archives, 205; V, 31, 47, 92; Mereness, pp. 159-160.

³⁷ Charter of Maryland, sec. IV.

³⁸ Copley's commission, VIII Archives, 267.

³⁹ Bacon, Laws, 1702, ch. i; Sharpe's Correspondence, Archives, VI, 15; IX, 369.

⁴⁰ Bacon, Laws, 1702, ch. i.

⁴¹ Mereness, p. 450.

pletion of justice . . ." ⁴² He, in his turn, transferred the administration of justice to the governor to be ". . . chancellor, chief justice, and chief magistrate . . . to appoint and constitute officers and ministers for the preservation of the peace . . . and execution of justice . . ." ⁴³

In the early commissions the governor was given the sole authority to hear and determine all civil and criminal cases, excepting those involving the right to life, member, or freehold. In such cases the governor and council, sitting as a court, had jurisdiction. ⁴⁴ In the same commissions the councillors were appointed justices of the peace. ⁴⁵

As keeper of the great seal of the province, the governor was, as such, chancellor with jurisdiction in equity cases; and issued all grants of land, commissions for office, and licenses. ⁴⁶ In the exercise of his equity jurisdiction, the governor sat as the court of chancery for the province. ⁴⁷

By the year 1638, the governor as chief justice and members of the council as associate justices constituted the provincial court, the supreme court of the province until 1685. This court had unlimited original and appellate jurisdiction. ⁴⁸ The same justices of the provincial court constituted, when sitting as the upper house of the legislature, a high court of appeals. This was a very curious anomaly, for in a few cases the judgment of the lower court was reserved! ⁴⁹ After the establishment of royal government, however, the governor and council instead of the upper house became the court of appeals and the governor ceased being a justice of the provincial court. After 1730 members of the council seldom sat as justices in the latter. ⁵⁰

⁴² Sec. VII.

⁴³ Commission of 1637, Bozman, II, 573.

⁴⁴ *Ibid.*, pp. 575, 674. It would seem from these all-inclusive exceptions that the governor seldom sat alone as a court.

⁴⁵ Bozman, II, 625-626.

⁴⁶ Greene, p. 141; Mereness, pp. 70, 153, 159-160, 185-186. The offices of governor and chancellor were combined, with the exception of the years from 1661 to 1689.

⁴⁷ Until 1684, the governor was also the judge of the admiralty court. Mereness, pp. 232-233.

⁴⁸ *Ibid.*, p. 229.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*, p. 234. Appeals were allowed after 1692 under certain

Besides being personally a part of the judicial system, the governor also had great influence over its organization. As has been mentioned above, in the organization of the courts, he appointed the various officers, their tenure being at his or the proprietor's pleasure and not during good behavior.

In addition to this means of influencing the judiciary, the governor, usually with the advice and consent of the council, was authorized by his commission the right to erect courts.⁵¹ Although this right was not expressly granted in the early commissions, nevertheless it was exercised to some extent by the governor as chief justice of the province.⁵²

As a necessary consequence of his duty to see to the due enforcement of the laws, the governor and the judges appointed by him had, in part, the duty to enforce judicial decisions. Although not always appointed by the governor, the attorney-general was subject to his orders, and prosecutions might be ordered or suspended at his command.⁵³

Thus we have seen that the provincial governor was himself a part of the judicial system and exercised both a direct and an indirect influence upon the administration of justice through his control of the organization of the courts and the machinery of enforcement. "It is clear," says Greene, "that under such a system the independence of the judiciary must have been seriously impaired . . ." ⁵⁴

RELATION TO THE LEGISLATURE

Perhaps exercising a more potent influence upon the course of provincial constitutional history than any other factor was the executive's relation to the general assembly. By the first

restrictions from this high court of appeal to the king in council and it does not appear that this right was changed before 1776.

⁵¹ Copley's commission, June 27, 1691, VIII Archives, 266. As a rule, however, courts were only erected on special order from the crown or proprietor.

⁵² Mereness, pp. 231-232.

⁵³ Bacon, Laws, 1715, ch. 48; 1722, ch. 5. Sometimes we find the governor and assembly erecting county and special courts by statute. Scharf, History of Maryland, I, 131.

⁵⁴ The Provincial Governor, p. 143.

commissions, distinctly subordinate to the governor and council, the assembly of freemen, by slow evolution during a period of almost a century and a half, attained a position of co-equality, chiefly through its control of the financial situation which more than counterbalanced the executive's power over it.⁵⁵

By authority of all the commissions of the colonial period, the governor, aided to a limited extent by his council, was given the power to call, adjourn, prorogue, and dissolve the assembly.⁵⁶ In the Charter of Maryland, the wish of the crown was expressed that the proprietor would assemble the freemen or their delegates for the framing of laws as often as necessary;⁵⁷ and the right to determine the form and manner of calling an assembly was expressly granted to the lord proprietor. In the early period, until after 1688, however, there seemed to be no determinate rule for convening assemblies. The governor, as the proprietor's deputy, regulated their composition and basis of representation by ordinance and called them whenever he pleased.⁵⁸

The first assembly, January 25, 1638, was composed of the governor, councillors, and any freemen who wished to attend. If any of the latter could not, or did not want to attend, they could send delegates or give proxies.⁵⁹ Prior to the calling of the next assembly, in 1638, writs of election were issued by the governor to each of the hundreds and to one manor, directing that two or more delegates be chosen. Personal writs were also issued to the councillors and to three other gentlemen. This assembly, when it met, was composed of the

⁵⁵ See Greene, chs. ix and x, for an excellent account of the struggle between the executive and the legislature throughout British colonial America.

⁵⁶ III Archives, 49-55; Bozman, II, 622. During the royal period, 1689-1715, consent of the council was required to convene the assembly. VIII Archives, 264.

⁵⁷ Sec. VII.

⁵⁸ McMahon, I, 145-149.

⁵⁹ On an important question of the session put to vote, because of the proxy system, nineteen persons cast sixty-nine votes! A complaint immediately arose that the governor, being the proxy for so many, controlled the assembly. Calvert Papers, No. 1, p. 160; Mereness, p. 195.

governor, five persons personally summoned, two delegates from each of the four hundreds, and one delegate from a manor.⁶⁰

Protests were made to the proprietor of this unfair and haphazard practice, but it was not until 1650 that the freemen definitely won the right to a system of representation whereby from one to three delegates were elected from each hundred. Ever after that, the representative system was followed; but it was not until the year 1692 that the system of representation was finally fixed by law.⁶¹

In 1642, the delegates of the freemen took their first step to remove any advantages the governor might secure from the privilege of issuing personal writs,⁶² by requesting that the assembly be divided into two houses, of which the representatives of the people should constitute one and have the right to veto any legislative measure. Denied by at least one governor, the point was finally yielded, in 1649, by Governor Stone. As a result, in 1650 and thereafter the bicameral system was followed. The governor⁶³ and the council formed the upper house, while the representatives of the freemen constituted the lower house. Mereness writes,⁶⁴

Henceforth the upper house was to stand for the rights and interests of the lord proprietor, while the lower house stood for the rights of the people. No law could be made or repealed without the consent of both houses, of the governor and the lord proprietor. The contest between the elements of monarchical government on the one side, and those of popular government on the other was . . . fought out by the two houses. . . .

When the assembly had once met, the governor claimed some control over the organization of the lower house. This control was largely dissipated, however, before the end of the colonial era. Occasionally, during the seventeenth century, the governor and the upper house declared with some effect

⁶⁰ Ibid.

⁶¹ Bacon, *Laws*, 1692, ch. 76. By this law, four delegates were elected from each county (which had replaced the hundred).

⁶² By means of this practice, the governor could pack the assembly with members favorable to his legislation.

⁶³ After 1675 the governor was not considered a member of the upper house. *Upper House Journal*, October 25, 1725.

⁶⁴ *Maryland as a Proprietary Province*, p. 197.

that a certain delegate was disqualified to sit in the lower house; but, after 1700, the lower house became the sole judge of elections, returns, and qualifications on its own members.⁶⁵ In 1749, the delegates of the freemen resolved that it was "a high infringement of and a dangerous attack upon the liberties of the freemen" of the province for a member of the upper house to interest, intermeddle, or concern himself in an election of delegates.⁶⁶ One prerogative, however, over the organization of the lower house, the governor did not relinquish. In Maryland, as in nearly all the other colonies, in accordance with the usage in England, the newly-elected speaker and clerk of the house were subject to the approval of the governor.⁶⁷

After the meeting and organization of the assembly, the executive still had great power over it, inasmuch as the length of its sessions depended upon his will. He could, as has been mentioned above, adjourn, prorogue, and dissolve it. In Maryland, however, these powers do not seem to have been used or threatened frequently in attempts by the governor to put an end to legislative action undesirable to him or to compel the passage of executive measures.⁶⁸ Although the power of dissolution was undoubtedly feared by those members of the lower house not sure of reelection, if the anti-government party should be strong, the governor had nothing to gain, and might even lose some of his supporters by an arbitrary dissolution before the end of the three-year term.⁶⁹

⁶⁵ Bacon, *Laws*, 1716, ch. 2; Mereness, pp. 205-208, 213.

⁶⁶ *Lower House Journal*, June 10, 1749. Quoted by Mereness, p. 211. Nevertheless, the governor and council were not stopped from using their political influence with the sheriffs, who conducted elections, to secure the election of delegates favorable or suitable to the administration. Greene, p. 148; Mereness, p. 204.

⁶⁷ *I Archives*, 397, 460; *Lower House Journal*, May 11, 1749.

⁶⁸ Mereness, p. 206. The most important prorogations before the assembly had completed its business were in 1739 and 1770. The latter session was ended by Governor Eden to prevent action on the Stamp Act. *Ibid.*, p. 208. In some of the other colonies, the rights of prorogation, adjournment, and dissolution were used quite effectively, though strenuously resisted, to compel, or retard, legislative action. See Greene, pp. 151-157.

⁶⁹ Mereness, pp. 205-206. A more effective feature of the right of dissolution was the power to refuse such action when a compliant

What has gone before indicates the indirect action of the governor upon the making of laws through his influence over the assembly; but the colonial governor of Maryland was not restricted to this indirect influence, for he was himself a part of the legislative system.⁷⁰

In the early part of the colonial period, before the legislature became bicameral, the governor, as authorized by his commission, sat with the freemen in assembly and made laws.⁷¹ However, after 1650, he no longer sat with the lower house, but with his councillors as an upper house. The last thread of his connection with the actual enactment of laws was only severed in 1675 when he was no longer considered a member of the upper house.⁷² Nevertheless, his influence in legislation was not entirely lost, as will be shown.

By the terms of all the commissions, the governor was empowered to make ordinances and to issue proclamations having the force of law, provided that any penalties for their violation attached thereto did not extend to the deprivation of life, member, or freehold. These ordinances were to remain in force until repealed by either the proprietor, the governor himself, or the two houses of the assembly.⁷³ The ordinance power was used widely in the beginning when the power of the assembly was quite small: to collect taxes, to regulate officers' fees, to create new offices, to erect courts, to elect and summons delegates to the assembly, and to erect local governmental units. After 1688, however, with the important exception of the regulation of officers' fees, the lower house

assembly was once chosen. However, in 1697, Governor Nicholson likened the General Assembly to the English Parliament and stated that, since a statute prohibited the continuance of one Parliament longer than three years, he thought it best to dissolve the Maryland assembly when it had continued that length of time. He accordingly dissolved the one then in session and thereby set a precedent which lasted down to 1776. Lower House Journal, June 11, 1697.

⁷⁰ This statement, that the governor was a part of the legislative system, is more true of the seventeenth century than of the eighteenth.

⁷¹ See, for example, the commission of 1642. Bozman, II, 622.

⁷² See above, note 63.

⁷³ Commission of 1644, Bozman, II, 633; III Archives, 203-205; *ibid.*, VIII, 264-265.

took these matters into its own hands and regulated them by statute.⁷⁴ With the exception of the cases given above, the issuance of ordinances seems to have been kept within reasonable bounds all through the proprietary régime. "The most common of the ordinances issued . . . were proclamations enforcing the provisions of statute or treaty, and regulations regarding subjects that might fairly be considered matters of executive concern."⁷⁵

During the earliest period, the proprietor, through his governor, attempted to carry into effect his charter right, belonging solely to him, of initiating legislation; but, due to repeated remonstrances of the freemen, he wisely relinquished this prerogative and gave to the representative body the right of initiation.⁷⁶ The governor did, however, retain the right of recommending legislation in his speech at the beginning of each session of the assembly; and, hereby, in addition to his power of assent or dissent of laws, was his personal influence felt. In order to bring about the enactment into laws of his recommended bills, it was the policy of the governor to win over the members of the opposition by appointing them to provincial offices. "At one time," says Greene, ". . . an elaborate system of corruption was proposed by which an assembly was to be kept permanently under control" by means of this expedient.⁷⁷ In attempting to combat this influence of the governor, even as early as 1678, the lower house passed an act disqualifying sheriffs and ordinary keepers (who received their licenses from the governor) from sitting as members of the legislature; and, three years later expelled from the lower house all sheriffs who had

⁷⁴ Mereness, pp. 204-205. - The struggle between the lower house and the governor and upper house over the question of officers' fees was the most bitter in colonial history. It continued up until the end of provincial times. Mereness, pp. 377-400, gives a complete account.

⁷⁵ Greene, p. 160. For example, a proclamation of 1672 prohibited the exportation of sheep, a measure designed to check evasion of the statute prohibiting the exportation of wool. V Archives, 105.

⁷⁶ Calvert Papers, No. 1, p. 158. This happened in 1638.

⁷⁷ The Provincial Governor, p. 185. See VI Archives, 183; *ibid.*, IX, 331, 375, 423.

been elected.⁷⁸ In 1716, an act was passed disqualifying all persons who would have been disqualified from sitting in the British Parliament.⁷⁹ In 1757, an all-inclusive act was passed disqualifying for election to the assembly all holders of proprietary offices.⁸⁰ Needless to say, perhaps, all of these acts were either negated by the upper house, or by the governor.⁸¹ But, until 1774, "the lower house never wearied of sending to the upper house a bill for preserving the independence of the former by providing that no one should accept an office while he was a member of the lower house."⁸²

Since the bare right of recommendation, when used without the dispensing of patronage,⁸³ carried with it very little actual power, the really important legislative function of the governor lay in his right to approve or to refuse to approve bills passed by the assembly.⁸⁴ This veto was not merely suspensive, but absolute. On the other hand, the governor's assent to legislation was neither final or unrestricted, for the proprietor reserved the right of ultimate veto. He sometimes vetoed acts which had been in force for a number of years, thereby working a hardship upon the people. The lower house attempted to secure the passage of an act to give the governor the final decision, but this was not allowed.⁸⁵

One of the greatest prerogatives of the governor, and one which excited more opposition than any other, was his control over fiscal affairs.⁸⁶ In the early colonial period, this control was quite extensive; but the introduction of the representative

⁷⁸ VII Archives, 17, 63, 114.

⁷⁹ Bacon, *Laws*, 1716, ch. ii.

⁸⁰ *Votes and Proceedings of the Lower House*, December 8, 1757.

⁸¹ Mereness, pp. 213-214.

⁸² *Ibid.*

⁸³ Before 1689, whenever the lower house proved recalcitrant, the governor was in the habit of calling the delegates before him in the upper house to bring them around to his way of thinking. In the later period, however, the governor was only partially successful in forcing his will upon them. *Ibid.*, p. 205.

⁸⁴ See Commissions of 1637 and 1642, Bozman, II, 573, 621, respectively. In the Instructions to Brent of 1643, this power was withdrawn. *Ibid.*, p. 627. Restored in 1644. *Ibid.*, p. 632.

⁸⁵ Mereness, p. 225.

⁸⁶ *Ibid.*, ch. v, *passim*.

assembly and the division of it into two houses gradually deprived him of such great power, rendering him dependent upon the lower house for supplies. If the governor had been able to retain the power over the purse, he could have controlled, most likely, the assembly with an iron hand. As it was, the assembly, with respect to taxes and duties, even as early as the year 1650, passed an act to prohibit the levying of either without the consent of the people or their representatives. Instead of limiting the government to annual appropriations, however, the lower house continued, as had been its practice, to grant lump sums in various acts with no limit to their duration.⁸⁷ This practice did not endure for any great length of time, for, in the eighteenth century, we find the representatives limiting the governor's control over financial affairs by making appropriations in detail and for short periods, by reason of which he came to be little more than an accounting officer, issuing warrants⁸⁸ in accordance with the detailed appropriation bills of the assembly, and having little discretion in the disposition of funds.⁸⁹ Thus, the lower house of the assembly, like the House of Commons in Parliament, gained the important power over the purse. However, one power of some moment remained in the hands of the governor, and that was the power to regulate officers' fees by ordinance.⁹⁰

The controversy between the governor and council on the one side, and the lower house on the other, over the regulation of fees constituted the principal cause of dispute between the forces of monarchical principles and those of democratic principles in the eighteenth century.⁹¹ No other contest between the proprietor's agents and the representatives of the freemen was waged so vigorously or for so many years. Mereness remarks: "Instead of consenting to leave the regulation to

⁸⁷ *Ibid.*, p. 340.

⁸⁸ No money could be withdrawn from the treasury except on the governor's warrant. VIII Archives, 404.

⁸⁹ Mereness, pp. 317-338; 340-400.

⁹⁰ *Ibid.*, pp. 43, 73, 102, 112, 116-117, 167, 183, 191-192, 298, 367, 457, 468, and 472. See Greene, pp. 159-160.

⁹¹ Mereness, pp. 373-400.

the governor and council, that [lower] house was unanimous in its declaration that it was the undoubted right of the freemen of Maryland that no officers' fees should be imposed upon them, but by the consent of their representatives in assembly, and that such liberty was established by several acts of Parliament."⁹² But the governor and his councillors held jealously to this power, which was a source of great income to them, to the end of provincial times; for, as late as 1770, the following resolution was passed in the lower house, still protesting:⁹³

Resolved, unanimously, that the Representatives of the Freemen of this Province have the sole right with the assent of the other part of the Legislature to impose Taxes or Fees; and that the imposing, establishing, or collecting any Taxes or Fees on or from the Inhabitants of this Province under color or pretense of any Proclamation issued by or in the name of the Lord Proprietary, or any other authority, is arbitrary, unconstitutional, and oppressive.

Thus, with the exception of officers' fees, and, to a limited extent, the general oversight of expenditures in the issuance of warrants, the governor had a gradually decreasing influence in fiscal affairs. He had, of course, the power of veto over appropriation bills, as did the council sitting as the upper house of the assembly. The latter, however, was completely under the control of the governor and afforded only a representation of the policy of the executive; but from the establishment of royal government in 1689, and continuing during the restored proprietary rule up to the Revolution, money bills could be originated only in the lower house; and, from 1740 on, the upper house was even denied the right to amend such bills.⁹⁴

The general control of the lower house over finance, and especially its control over expenditures, led to the assumption of powers properly executive. Attempts were made to con-

⁹² Maryland as a Proprietary Province, p. 375.

⁹³ Lower House Journal, November 1, 1770. See also *ibid.*, November 8, 1770; October 17, 1771; November 22, 1771; and November 30, 1771.

⁹⁴ Mereness, p. 224. Governor Sharpe wrote to Lord Baltimore in 1756 that it would be thought a little irregular for the upper house to offer amendments to a money bill. This shows a well-recognized custom of the government to leave financial affairs to the exclusive control of the lower house. VI Archives, 419.

trol the appointment of the sheriffs, who collected most of the money, and the treasurer, to whom the sheriffs paid what was collected from the public levies. The governor retained the right to appoint sheriffs, but the representatives largely nullified this prerogative by calling to account any sheriff charged with neglect or oppression in the execution of his office. From 1695 to 1736, the lower house appointed the treasurer; but, as this officer had much less important duties with respect to the public funds than had the sheriffs, the lower house relinquished the power to appoint him, and it reverted to the governor.⁹⁵ With regard to the governor's military power, the encroachment of the lower house was particularly marked. During the intercolonial wars, the urgent need of supplies for military purposes enabled the house, in making grants of money, to impose the most arduous conditions. It prescribed in detail the purposes for which the money was to be expended, dictated military operations and the disposition of troops, appointed its own commissioners to distribute the funds; and, finally, through the appointment and removal of officers, it went so far as to interfere with the discipline of troops.⁹⁶ Governor Sharpe declared, in 1757, that according to a bill of that year, the troops were to be "under the Command of no Body but the Agents," who were appointed by the assembly.⁹⁷

The policy of the representative body accomplished the end to which it had been directed: the weakening of the power of the governor, who, if not himself the object of suspicion and distrust, was at least the representative of foreign interests at odds with those of the freemen of Maryland. The Charter of Maryland, giving to Lord Baltimore all the regal powers and prerogatives of a prince, was granted at a time when the mother country itself was casting off the bonds of autocratic government. The growth of democratic principles, and the desire for self-government in England, could not have failed

⁹⁵ Lower House Journal, November 2, 1713; October 23, 1724; May 23, 1737.

⁹⁶ Mereness, pp. 279-338.

⁹⁷ IX Archives, 100; Bacon, Laws, 1756, ch. v.

to have had their influence in America. Every colony and royal province from Maine to Georgia felt this influence and reacted to it by a long and hard-fought struggle against their executives for their rights as Englishmen.⁹⁸

Granted that the degree of self-government to which the people of the province of Maryland had attained was only right, and granted that the enforcement of the principle of popular control over the executive was a beneficial thing, the system of legislative encroachments in affairs purely and properly executive nevertheless had some evil and far-reaching effects. Certainly, the administrative system developed was far from being perfect, and legislative encroachments on the governor's executive powers only resulted in a decentralized and irresponsible administrative system. Then, again, it had another effect which was not so immediate and only exhibited itself in the first Constitution of Maryland, wherein was shown a general distrust of the executive in the tendency to make the governor almost wholly dependent and subordinate to the legislature. The constitutionalists forgot that the governor was from 1777 just as much a representative of the people as the members of the legislative body.

It must not be forgotten, when reflecting upon the Maryland Colonial Governor, that he was an appointed officer, an agent, of a lord proprietor living in England. In the first pages of this account, it is mentioned that "the proprietary governor of Maryland had a dual position: he was the centre of all local administration, the chief executive of the province; and, he was the agent of a higher authority, the guardian of

⁹⁸ The Marylanders, like the people of the other proprietary colonies, had an additional grievance to struggle against: the feudal rights of the proprietor under the palatinate charter. The principal source of discontent was the enormous amount of territorial revenue derived from the purchase money paid for either vacant or improved land, quit-rents, alienation fines, ferry money, and port duties. All this revenue belonged to the proprietor and the people felt that too much money was drained from the province. Efforts to control the rates, which the people felt ought only to be fixed with their consent, were largely in vain and the proprietor was in a large measure successful in preserving his rights and collecting his dues. Mereness, pp. 76-95.

the interests of the proprietor.”⁹⁹ Here we have a divergence of interests. Could the governor carry out the interests of his lord and, at the same time, advance those of the people? This is what made the governor’s position so difficult in Maryland. Some of the proprietors were unwise, lacking in acumen, and inefficient, constantly interfering and meddling in purely local affairs. If all the proprietors had been as wise and discreet as the first, Cecilius Calvert, it is possible that more of Maryland’s colonial governors would have been worthy of great praise and particular mention. Notwithstanding the lack of wisdom and the interference of some of the later proprietors, the governors of Maryland were, on the whole, a capable lot of men, especially those who held office in the last half century of the colonial regime.

In May, 1752, after the death of Samuel Ogle, who had been three times governor, the editor of the *Maryland Gazette* pronounced the following eulogium upon him: “His long residence among us made him thoroughly acquainted with our constitution and interests, and his benevolent disposition induced him invariably to exert all the influence his station, as Governor, gave him, and every means which his good sense could suggest, to promote the public good.”¹⁰⁰

On December 20, 1769, the lower house wrote to the proprietor: “Though a retrospection upon the proceedings of this house will not permit us to say that Mr. Sharpe always paid a due regard to the interest of the province, yet we must acknowledge it is our opinion that his own inclination led him very much toward that desirable object.”¹⁰¹ In an address upon Governor Sharpe’s retirement the justices of Kent County said:¹⁰²

During your Excellency’s residence here the King’s prerogative, his Lordship’s rights, and the liberty of the people have been equally your care. . . . At several different periods when it required much skill and judgment to direct the political helm, affairs were so wisely and prudently conducted by your Excellency that the people of this

⁹⁹ See p. 37.

¹⁰⁰ Quoted by Mereness, pp. 167-168.

¹⁰¹ Lower House Journal, December 20, 1769. Quoted by Mereness, p. 169.

¹⁰² Quoted by Mereness, p. 170.

province found themselves under fewer embarrassments than those of other places.

The successor of Sharpe, Robert Eden, was, like his predecessor, a defender of constitutional liberty and a popular governor. Mereness says of him:¹⁰³

He was doubtless a man of less ability [than Sharpe], resolution, and diligence in state affairs; but he was less interfered with by the lord proprietor. He was courteous, easily accessible, fluent of speech, and possessed of a good amount of political tact. . . . When the great hostility arose over officers' fees, it was directed against the members of the upper house rather than against the governor; and when the great struggle came with the mother country, it was with much regret that the people of Maryland saw Eden leave the province.

Such are some brief testimonials, and there are many, of the last governors of the province of Maryland. With such men as governors, at a time when affairs were so critical between the colonies and England, it is small wonder that the transition from the old to the new form of government was made so peaceably.

¹⁰³ Ibid., pp. 171-172. See B. Steiner, *Life and Administration of Sir Robert Eden*, for an excellent biography of Maryland's last colonial governor.

CHAPTER III

THE EVOLUTION OF THE GOVERNOR'S POSITION IN THE CONSTITUTIONS OF 1776, 1851 AND 1864

Over a century and a half has elapsed since the establishment of the first constitution for the State of Maryland in 1776. The office of governor, along with the other branches of the government, has undergone significant constitutional changes in that period which merit a prominent place in this treatment of its development.

In Maryland, counting the first, there has been a total of four different constitutions; namely, 1776, 1851, 1864, and the last and present, 1867. In addition, many amendments effecting momentous changes in all departments of government have been appended to each.

The form of government established for the Province of Maryland by Lord Baltimore in 1634 came to an end in the early days of the Revolution. After a short interval, a constitution was drawn up and the first state government inaugurated in 1777. This was not, however, an abrupt or revolutionary change from proprietary to state, but took place over a period of about three years. In this transition, the reins of authority were gradually assumed by a provisional government existing for a time side by side with that of the proprietor's government.¹

The Convention of the Province of Maryland, as this provisional government was called, having as its basis the "Association of the Freemen of Maryland," came into being, in 1774, for the purpose of offering, or being prepared to offer, armed resistance to the encroachments of the English Government. It did not aim at displacing the existing proprietary government, nor at attempting to exercise any civil authority

¹ For a full and excellent account of the provisional government, see J. H. Silver, "The Provisional Government of Maryland," in *Johns Hopkins Studies in Historical and Political Science*, XIII, 477-537; see also *The Proceedings of the Conventions of the Province of Maryland*.

whatsoever.² However, as strained relations approached a crisis, it gradually assumed civil authority and exercised all governmental powers, until in 1776, the Convention drafted a constitution for a new and permanent government and voluntarily resigned its powers as a governing body.³

Although the Convention operated as a unit in governmental action, in order that its commands and regulations might be carried into execution, both during the session and in recess, a body of members was appointed to act as its executive.⁴ This Council of Safety, as it was called, had wide discretionary power of an executive character, limited legislative functions between sessions of the Convention, and acted in judicial matters as a high court of appeal.⁵ It drew its powers from the Convention, which, in turn, drew its powers from the people; and each was responsible to its originators.⁶

After the Declaration of Independence, the next thing arranged for was the formation of a permanent government. A new convention was ordered elected by the voters and the work began, August 17, 1776, on the first Constitution.⁷ Out of this came the Declaration of Rights and the Form of Government, both combining to form a constitution for the state. The Convention adjourned for two weeks after distributing copies; and, in the next session, the Convention

² Proceedings of the Conventions, p. 72.

³ Silver, *op. cit.*, pp. 536-537. For the esteem in which this provisional government was held, see Chancellor Hanson's Introduction to the Journals of the Constitutional Convention of 1776, embodied in his *Laws of Maryland, 1763-1784*.

⁴ The number of members of the Council was at first sixteen; eight from each shore; their terms continued to the close of the next succeeding Convention. The number was changed to nine: five for the western shore and four for the eastern. Here we have an excellent example of the plural executive. Silver, p. 502.

⁵ Governor Eden's opinion of the Council is to be found in a letter of August 27, 1775, quoted in Scharf, II, 188. Regarding the three powers of government being vested in one body, Andrews says: "Perhaps no assembly or group in all history exercised these triplicate powers with so great a measure of wisdom, moderation, and unselfish devotion to cause and country." *History of Maryland*, p. 325, note.

⁶ Silver, p. 503.

⁷ Proc. of the Conventions, pp. 311-316; 349-365.

formally adopted the fruit of its labors.⁸ Although the Convention resigned, the Council continued to act as the executive until the inauguration of the first Governor on March 21, 1777.⁹ Regarding the Council, Scharf says: "Its authority had no limit but discretion, yet its mandates were characterized by justice and moderation."¹⁰

Although declaring the doctrine of the separation of governmental powers,¹¹ the first constitution to a large extent ignored it. As in the other revolutionary governments, the executive department was subordinated to the legislative. This step appears to have been the general reaction of the people from the experience with the powerful colonial executive, in whom executive, legislative, and judicial powers were centered.¹² The representatives of the people were, therefore, made supreme. Lines of control ran from the legislature to the other departments. The pendulum had swung, but too far, as the later constitutions will show.

THE GOVERNOR UNDER THE CONSTITUTION OF 1776

As the Council of Safety had been placed under the control of the representatives of the people, the governor in the new constitution was subordinated to the General Assembly, being made elective annually on joint ballot of the two houses of the latter. If two or more persons had equal votes in their favor, a second ballot was ordered to be taken. If tied again, the election was to be determined by lot between those having equal votes.¹³

The general qualifications for the office of governor were that a candidate must be "a person of wisdom, experience, and virtue";¹⁴ the particular, that he be at least twenty-five

⁸ No provision was made for popular ratification as the people were apparently regarded as sufficiently present in the Convention; and when adopted by it, the instrument was considered binding upon all.

⁹ Silver, p. 536.

¹⁰ History of Maryland, II, 288. For a character sketch of the first governor, Thomas Johnson, see Scharf, II, 285-287.

¹¹ Declaration of Rights, art. VI.

¹² See above, ch. i.

¹³ Constitution of 1776, art. XXV.

¹⁴ Ibid., art. XXV.

years of age, a resident of the state for five years, and possess real or personal property within the state above five thousand pounds current money, of which one thousand was to be freehold.¹⁵

The term of office was fixed at one year.¹⁶ The governor was not eligible to more than three successive terms, nor eligible again until four years after his last term.¹⁷ This latter provision was inserted to reinforce the popular doctrine of frequent rotation in executive office.¹⁸

In case of a vacancy occurring in the governor's office, the Senate and House, if sitting, were to elect another person; however, if not in session, the first named member of the executive council was to qualify and act as governor until the next session of the assembly at which a governor was to be appointed for the remainder of the term.¹⁹

As the governor, according to the provisions of the constitution, was usually restricted to acting only with the advice and consent of his council, some description of that body must be given at this point.

The executive council was to consist of five of the most "sensible, discreet, and experienced men," above twenty-five years of age, residents in the state at least three years prior to election, with property qualification of the value of one thousand pounds each. They were to be elected annually, like the governor, on joint ballot of the two houses of the assembly.²⁰

The function of the council was to constitute a check upon the governor, and, as in the colonial period, to advise him and to transact executive business. The governor presided at meetings and was entitled to vote in case of a tie. If a

¹⁵ *Ibid.*, art. XXX. Repealed by an amendment of 1810 abolishing the property qualification for all officers appointed or holding office of profit or trust. According to art. LV the governor must be a Christian.

¹⁶ *Ibid.*, art. XXV.

¹⁷ *Ibid.*, art. XXI.

¹⁸ Declaration of Rights 1776, art. XXXI.

¹⁹ Constitution of 1776, art. XXXII as amended by art. XI, sec. 1, of the amendments to the constitution (1809).

²⁰ *Ibid.*, art. XXVI.

vacancy should occur in the council, the members thereof were to elect another person for the residue of the term. If it happened that the governor's office became vacant, the senior member was to act as governor *ad interim* until he should call a meeting of the assembly to elect a governor.²¹ Members of the council, as well as the governor, were prohibited from holding any other office of profit in the state.²²

The governor and the council constituted the executive department of the state, but the governor alone was given the right to exercise all the other executive powers of government where the concurrence of the council was not required by the constitution.²³

Although the embodiment of the militia required the advice and consent of the council, the governor alone had the direction thereof, as well as that of the regular land and sea forces. He was not to command them in person, however, unless advised by and on sufferance of the council.²⁴ With the council, the governor could appoint all officers of the militia and officers of the regular land and sea forces. Also, with the council, he was empowered to suspend militia officers for one month, and to suspend and remove any regular officer. By his sole authority the governor could remove militia officers in pursuance of a judgment of court martial.²⁵ At any time

²¹ *Ibid.*, arts. XXVI, XXXIV, XXXV, XXXVI. By an amendment to the constitution in 1809, it was not necessary for the senior member to call the legislature to fill the office. He was simply to act as governor until the next meeting of the legislature. Amendment XI, sec. 1. In absence of the governor, the senior member was to preside over the council. Art. XXXIV.

²² *Ibid.*, art. XXXVII as amended by art. XI, sec. 2, of the amendments.

²³ *Ibid.*, art. XXXIII. An amendment to the constitution was proposed by an act of 1826, ch. 137, to place the sole executive power of the state in the governor alone, but it failed of confirmation by the succeeding legislature.

²⁴ *Ibid.*, art. XXXIII.

²⁵ *Ibid.*, art. XLVIII. In relation to the military, the powers of the governor and council were enlarged by acts of Feb.-April, 1777, ch. 24, and supplemented by acts of Nov.-Dec., 1779, ch. 5, and of May, 1781, ch. 34, sec. 7. The original and supplementary acts gave the executive full powers (except banishment) as had ever been lodged in the Councils of Safety. These acts were passed mainly to aid in the successful prosecution of the war. When the exigencies for which they were adopted passed, they were allowed to expire (1781).

in the discretion of the governor, he was given authority to call out the militia to suppress insurrections and to quiet disturbances.²⁶

Under the first constitution, the governor and council were given wide powers in relation to appointment to office. These powers applied to judicial as well as to executive and administrative offices. By and with the advice and consent of the council the governor was to appoint the Chancellor, all Judges and Justices, Attorney-General,²⁷ Registers of the Land Office, Surveyors, and "all other civil officers of government."²⁸ With regard to the sheriffs in each county, the governor alone was to elect as sheriff one of the two candidates elected every third year.²⁹ The Registers of Wills for each county were to be commissioned by the governor alone on the joint recommendation of both houses of the Assembly.³⁰

The power of making temporary appointments and filling vacancies in offices constitutionally appointive by the Assembly or the courts was delegated to the governor and council to be exercised during legislative or judicial recess. These appointments were to run only until the next meeting of the assembly, or in regard to the courts, until their next session.³¹

Control over officers by the governor and council was weakened by the provision of the constitution which stated that all officers appointed during good behavior could only be removed

²⁶ Acts of Nov., 1783, ch. 1.

²⁷ Amendment to the Constitution confirmed by acts of 1817, ch. 69, provided that the Attorney-General be placed under the direction of the Assembly, and all previous parts of the Constitution applying to him were voided. By acts of 1817, ch. 146, sec. 1, the Attorney-General was required to give his opinion and advice in writing when required by the governor and council.

²⁸ Except Assessors, Constables, and Overseers of Roads. Constitution of 1776, art. XLVIII. An amendment to the constitution, confirmed by acts of 1818, ch. 159, required the governor "... to nominate, and by and with the advice and consent of the council, appoint, all such officers as are directed to be appointed by the executive, either by the constitution or laws of this state."

²⁹ Const. of 1776, art. XLII.

³⁰ *Ibid.*, art. XLI.

³¹ *Ibid.*, arts. XIII, XL. The judges and justices of the General Court and county courts had power to appoint clerks of the court. Art. XLVII.

for misbehavior upon conviction in a court of law,³² or by the governor upon address of two-thirds of all the members of both houses of the Assembly.³³ All other civil officers appointed for a term of years were removable by the governor and council.³⁴ The finance officers of the state were not at all subject to removal by the executive since they were appointive by and served at the pleasure of the House of Delegates.³⁵ Thus, it might be seen that the legal directive power of the executive in relation to the more important officers, at least, tended to be small, inasmuch as the removal power was either lodged elsewhere or subject to check.

Among the minor constitutional executive powers of the governor may be mentioned his power of pardon, a survival of the prerogative of the colonial executive to dispense the mercy of the state. He was empowered to grant reprieves or pardons for any crime, except in such cases where the Assembly should otherwise direct.³⁶ An additional power was that he might lay shipping embargoes during recess of the General Assembly for any length of time not exceeding thirty days in any one year, during which time he was bound to summon the Assembly to meet. He might also order, at his discretion, any vessel suspected of being infested with the plague to ride in quarantine.³⁷

Thus, it may be seen by the account above that the Governor possessed few executive powers which he could exercise alone. In most cases he was checked by the executive council, or by the General Assembly, or by the courts. Moreover, the exercise of inherent executive powers was denied to him by a clause of the constitution which stated that: “. . . the Gov-

³² These officers were: Chancellor, Attorney-General, Clerks of the General and County Courts, Registers of the Land Office, and Registers of Wills. *Ibid.*, art. XL.

³³ Declaration of Rights, 1776, art. XXX; Amendment IX, confirmed 1805.

³⁴ Constitution of 1776, art. XLVIII.

³⁵ Treasurers and Commissioners of the Loan Office. *Ibid.*, art. XIII.

³⁶ *Ibid.*, art. XXXIII; acts of November, 1787, ch. 17, pars. 2 and 3; ch. 26, par. 22.

³⁷ *Ibid.*, art. XXXIII.

ernor shall not, under any pretense, exercise any power or prerogative by virtue of any law, statute, or custom of England or Great Britain."³⁸

Remembering the broad powers and function of the colonial governor in relation to legislation and the legislature, the position of the governor in similar relationship under the first constitution suffers by contrast. Guarding against the recurrence of arbitrary executive action, the Declaration of Rights stipulates that "no power of suspending laws, or the execution of laws, unless by or derived from the Legislature, ought to be exercised or allowed." Further, it states that "no aid, charge, tax, fee, or fees, ought to be set, rated, or levied, under any pretense, without the consent of the Legislature."³⁹ Action in such cases was regarded as being a part of the prerogative of the representatives of the people.

The state governor was given no power to initiate legislation, as had been claimed by his predecessor; and it was not until 1795 that he began to make recommendations for needful laws, thus establishing the custom of sending messages to the Assembly at the opening of each session. The Assembly did not resent this interference; but, on the contrary, welcomed it, saying: "Although not sanctioned by precedent, or enjoined by the Constitution, such communications have certainly their use, and we wish that future governors may follow the laudable example, whenever they may deem it expedient . . ."⁴⁰ In certain emergencies the governor and council could adjourn and convene the Assembly. Each house of the Assembly could adjourn itself; but if the two houses should adjourn to different days, the governor was given the power to appoint one of those days, or some intermediate day, as the date of meeting. With the council in case of emergencies, he could call them before the time to which they adjourned, giving at least ten days' notice.⁴¹ However, the governor

³⁸ Ibid.

³⁹ Declaration of Rights, 1776, arts. VII, XII.

⁴⁰ Scharf, II, 597. This custom was initiated by Governor Stone.

⁴¹ Const., 1776, art. XXIX.

could not adjourn or convene the legislature otherwise than as aforesaid.⁴²

The last thread of control by the executive over the sessions of the Assembly was broken by the constitutional provision prohibiting the governor from exercising the rights of prerogation and dissolution.⁴³ This remnant of the royal prerogative was disputed in the colonial era by the representative Assembly and was discarded when the province became a state. It would have been an anomalous thing if the executive had been allowed to exercise such control over the body from which he received his appointment.

Under the first constitution, the governor was not allowed to participate in the enactment of laws. The constitution did require that all bills passed by the Assembly, when engrossed, should be presented by the Speaker of the House, in the Senate Chamber, to the governor, who should sign them, and affix to them the Great Seal of the state, in the presence of both houses.⁴⁴ Nevertheless, this was simply a ministerial power which he could not withhold, in the exercise of which he was not permitted to consider the propriety of the acts submitted. As McMahon has stated, he had no veto upon them and his signature was not necessary to give them efficiency, but was a mere authentication of them as acts of the Assembly.⁴⁵

Thus, we find, upon an examination of the governor under the first constitution, that he was the supreme executive of the state, and had great powers of appointment; but, on the other hand, we find that he was checked by an executive council which was, in the same manner as himself, elected by the General Assembly. That this check by a council and election by the Assembly was not conducive to independence of gubernatorial action is not hard to understand. The governor had

⁴² An amendment of 1845, ch. 269, sec. 3, attempting to give the governor power to convene the Assembly by proclamation whenever he might deem it expedient and proper, was not confirmed.

⁴³ Const., 1776, art. XXIX.

⁴⁴ Ibid., art. LX.

⁴⁵ An Historical View of the Government of Maryland, p. 439; see also, Scharf, II, 280.

no power in the making of laws and was denied even a qualified veto over action of the Assembly. Here we have a government of unified powers instead of one of a separation and balance of powers, the direct antithesis of the statement in the Declaration of Rights, "That the legislative, executive, and judicial powers of government, ought to be forever separate and distinct from each other."⁴⁶

In order to become a component and coequal part of the government, and to become free of total dependence upon the legislative body, the office of the Maryland governor passed through several constitutional changes following 1776, which will be examined in the following pages.

THE CONSTITUTIONAL AMENDMENT OF 1837

Under the constitution of 1776, the governor was purely an executive officer, as we have seen, and his position was wholly a dependent one, being elected by the Assembly and checked by a council which received its election from the same source. To all intents and purposes, the office of governor remained in that same dependent position until 1837, when the first great alteration occurred in the state constitution and relieved the governorship from its position of dependence.

The first constitution had lasted for about sixty years with only slight or minor amendments, a period, much longer than most of the constitutions of the other states, in which conditions changed within the state to such a degree as to outgrow the original instrument.

By the terms of the constitution, the state was a confederation of counties, each with equal representation in the popular House without regard to population or wealth. Due to a gradual shift in population from the southern and eastern counties, the northern and western ones became thickly settled and soon overbalanced the older sections of the state. By 1830, the shift had become so pronounced that a minority of one-fourth of the people was found to have the constitutional right to elect a majority of the members of the legislature,

⁴⁶ Art. VI.

thus controlling all the departments of government. Since the executive department, which appointed most of the civil officers, was "the creature of the legislature," it, too, was controlled by the entrenched minority.⁴⁷ Such a state of affairs could not endure and it was not long before a militant Reform Party was organized to bring about a constitutional revision.⁴⁸

Year after year petitions were made to the legislature for redress; but due to the influence of the older counties fearing a reduction in power, they were rejected. The Reform Party held many widely attended meetings in the more thickly populated counties and urged a constitutional convention. This was refused by the legislature, however, as being an illegal means of amendment, since the amending clause of the constitution provided for amendment by the General Assembly.⁴⁹ Still, the legislature made no move toward even a legal revision, until alarmed by the state of public feeling produced by the reformers and fearing an overturning of the government, it was reluctantly forced to act.

In the latter part of 1836 and the first few months of 1837, the legislature, resisting successfully the calling of a convention, was coerced into offering a palliative in the form of an amendment to the constitution making many of the desired changes.⁵⁰ Using the words of Scharf, the alterations embodied in this amendment "terminated one of the most exciting periods in Maryland's political history."⁵¹

The reformers had asked for (1) the election of the governor by the people and abolition of the council; (2) the popular election of one senator for each county and Baltimore city; (3) reappointment of seats in the House of Delegates; (4) the abolition of all offices for life and the appointment of judges for limited terms by the governor and Senate; (5) the election of county clerks and registers

⁴⁷ Scharf, III, 188.

⁴⁸ *Ibid.*, pp. 188 ff.

⁴⁹ Amendment by bills passing one legislature subject to confirmation by a new and succeeding one. Constitution of 1776, art LIX.

⁵⁰ Acts of 1836, ch. 197, confirmed by acts of 1837, ch. 84.

⁵¹ History of Maryland, III, 196.

by the people; (6) limitation and restraint on the powers of the legislature in the future grant of charters; and, (7) a general rearrangement of the constitution to free it from uncertainty and obscurity.⁵² They received answers to the first three demands, but not to the remaining four.

By the amendment of 1837 the executive department was almost entirely reorganized. That part of the constitution which related to the governor and council was abrogated, abolished, and annulled. The council was abolished and the whole executive power of government was vested exclusively in the governor, subject, nevertheless, "to the checks, limitations and provisions" enumerated in the amendment.⁵³

Concerning election, the governor was no longer to be elected by the Assembly, but by popular vote for a term of three years,⁵⁴ and was ineligible to succeed himself.⁵⁵ The state was divided into three gubernatorial districts from which the governor was to be elected in turn, and not at large as heretofore. The qualifications for the person voted for as governor remained practically the same with the additional qualifications that he must be at least thirty years of age instead of twenty-five, and a resident of his gubernatorial district for at least three years.⁵⁶ In case of a tie vote between two or more candidates, the election was thrown into the Assembly.⁵⁷ If a vacancy should occur in the office of governor, the legislature was authorized, if in session, to elect a successor for the remainder of the term. If the legislature should be in recess, and in any case until the election and qualification of a successor, the secretary of state, a new officer, was to succeed *ad interim* to the executive duties.

⁵² Resolution of the Reform Convention, November 16, 1836. Scharf, III, 195.

⁵³ Acts of 1837, ch. 84, sec. 13. As we are concerned in the present treatise primarily with the governor and his powers, those parts of the amendment which concern the other departments will be mentioned only in so far as they affect the subject at hand. For the changes in the constitution, see Niles' Register, LII, 73; and McSherry, History of Maryland, p. 352.

⁵⁴ Ibid., sec. 20.

⁵⁵ Ibid., sec. 23.

⁵⁶ Ibid., sec. 20.

⁵⁷ Ibid., sec. 22.

From the secretary of state, the line of succession ran to the president of the Senate and thence to the speaker of the House of Delegates.⁵⁸

With regard to appointments, the executive council having been abolished, the governor was empowered to nominate, and by and with the advice and consent of the Senate, to appoint all officers of the state whose appointment was not otherwise provided for in the constitution or laws.⁵⁹ Should vacancies occur in such offices during the recess of the Senate, the governor could grant commissions to expire upon subsequent appointment during the next senatorial session, by and with the advice and consent of the Senate.⁶⁰ In making nominations, the governor could not renominate the same person during the same session for the same office, in case he should have been rejected by the ratifying body.⁶¹ Also, the governor could not, during senatorial recess, fill a vacancy in the same office by appointing such a rejected person.⁶²

As mentioned above, a secretary of state, to take the place of the clerk of the council, was created by this amendment whose duties and salary were to be regulated by law. The appointment of this officer was vested in the governor and Senate to continue for one year or until a successor could be appointed.⁶³

The most important and radical changes which were caused by this reform with regard to the governor was his election by popular vote, and the increase of his term from one to three years. These two changes, coupled with the abolition of the council, served to render the governor somewhat more independent of the Assembly than had before been the case. The governor's meagre legislative and judicial functions were not increased, but his powers of appointment in relation to

⁵⁸ Ibid., sec. 18.

⁵⁹ Ibid., sec. 14.

⁶⁰ Ibid., sec. 15. The commissions were also to expire one month after the next regular session of the Senate, although no successor should be appointed.

⁶¹ But the Senate might convey its willingness to reconsider its rejection. Ibid., sec. 16.

⁶² Ibid.

⁶³ Ibid., sec. 17.

the administration and the judiciary were augmented as a result of his initiative in appointing officers.⁶⁴

In providing for the other demands of the reformers, the election of senators by an electoral college was abolished by the amendment and popular election was substituted.⁶⁵ Greater control over the lower house was secured to the more populous counties by a reapportionment of seats in that house, representation being accorded upon the basis of population.⁶⁶

THE CONSTITUTION OF 1851⁶⁷

The changes made by the amendment of 1837 served to check for a few years the demand for a convention to make a general revision of the old instrument. However, the amendment, as it has been denominated, was only a palliative, and it was not long before agitation again arose aimed at a thorough constitutional revision. The constitutional conventions held in other states set the precedent for a large number of Marylanders to demand an elected convention for the purpose of amendment and revision, but the legislature successfully resisted this demand for over twenty years.⁶⁸

From the very inception of our state government in 1776, great confidence had been placed in the legislature as the guardian of individual rights, and the ultimate control of all departments had been vested in it. James Madison and others had warned against such a concentration of power, but these warnings had fallen on deaf ears, in Maryland at

⁶⁴ "The governor shall nominate, and, by and with the advice and consent of the senate, shall appoint all officers of the state . . ." Acts of 1837, ch. 84, sec. 14. The Senate, in performing its function, only ratified the governor's nominees, unlike the council, which took part in the actual nomination.

⁶⁵ *Ibid.*, sections 1-7. The system of dividing senators into three classes, one-third of them retiring every two years, as followed by the Constitution of the United States, was adopted. The term of a senator was set at six years.

⁶⁶ *Ibid.*, arts. 9, 10.

⁶⁷ For a complete account of the events leading up to the constitution, see James W. Harry, "The Maryland Constitution of 1851," *Johns Hopkins Studies in Historical and Political Science*, XX, 387-464.

⁶⁸ Harry, *op. cit.*, pp. 390-391.

least.⁶⁹ That confidence which the people of Maryland had in their legislature was not shaken until certain events occurred which forced them into attempts to curtail its power.

The chief causes of the legislature's loss of prestige were its enormous extravagances in pledging the credit of the state for unwise and ill-managed public improvements,⁷⁰ and to excessive taxes levied to meet the obligations arising therefrom.⁷¹

In addition to agitation for legislative reform, there arose at the same time a desire for the reform of the method of appointing officers. Objections were raised, particularly to life tenure and appointment of judges by the governor. It was claimed that the appointing power was abused by political consideration,⁷² and some persons were of the opinion that the people at large could judge of the qualifications for office as well as the governor.⁷³

Yearly importunities to the legislature to call a convention were ineffective until the Reform Party, grown to large proportions, in 1849 secured control of the legislature. A bill was passed to take the sense of the people upon the propriety of calling a constitutional convention. The subsequent vote being in the affirmative, delegates were elected, and the convention assembled in Annapolis, November 4, 1850.⁷⁴

The Constitution which was framed by this Convention was a very unsatisfactory document, and was adopted only as a compromise measure. The convention members seemed to have been ashamed of it, for they never passed it in legal form. It was not engrossed and adopted by the convention

⁶⁹ See ch. i, p. 10.

⁷⁰ In the short space of seven years, 1832-1839, the state debt was augmented by twelve millions of dollars. Scharf, III, 204.

⁷¹ *Ibid.*, pp. 209-213.

⁷² Harry, *op. cit.*, pp. 425-426.

⁷³ E. I. Hinkley, "The Constitution of the State of Maryland," (1851) appendix, p. 77. See ch. i, note 23.

⁷⁴ Scharf, III, 240-241. The fact that the articles of the constitution which gave to the legislature power to propose and make amendments were not repealed gives the Convention a revolutionary or extra-legal character.

as a whole but was put to the people for a vote on recommendation of only fifty of its members.⁷⁵ Nevertheless, the Constitution was adopted by the people, who were governed in their voting rather by their dissatisfaction with the existing state of things than by any clear idea of the reforms proposed.⁷⁶

By the provisions of the new Constitution many of the desired reforms in the legislature, looking toward a restriction of its powers, were made; in particular, the prohibition against loaning the credit of the state, restrictions on the borrowing power, and limitations on the power to charter banks and other corporations.⁷⁷

In regard to the executive, the new Constitution changed the term of office from three to four years in order to cause its expiration to coincide with that of every second term of the delegates who were elective biennially.⁷⁸ The old gubernatorial election districts were retained, as well as the system for choosing the governor in case of a tie, and for filling vacancies.⁷⁹ In addition to the qualifications in the old Constitution, it was required that the candidate for governor must have been for five years a citizen of the United States.⁸⁰ The governor's annual salary was definitely fixed at thirty-six hundred dollars.⁸¹

In this constitution, like the old one, the executive power was vested in the governor and he was required to see that the laws be faithfully executed.⁸² To carry out this provision, he was empowered to call out the militia to enforce the execution of the laws.⁸³

⁷⁵ Scharf, III, 242.

⁷⁶ *Ibid.*

⁷⁷ See art. III, Legislative Department of the Constitution of 1851.

⁷⁸ Constitution of 1851, art. II, sec. I. In the Convention there had been a motion made to elect the Governor by means of an electoral college, but this was rejected. Debates, I, 455.

⁷⁹ *Ibid.*, sections 4, 5, 7, 8.

⁸⁰ *Ibid.*, sec. 6.

⁸¹ *Ibid.*, sec. 20. The salary of the governor up to this time was regulated by statute. Acts of 1785, ch. 28: 1000 lbs.; acts of 1837, ch. 131, sec. 1: \$4,200.00; acts of 1845, ch. 232, sec. 1: \$2,000.00; and acts of 1849, ch. 53, sec. 1: \$3,600.00.

⁸² *Ibid.*, secs. 1, 10.

⁸³ *Ibid.*, sec. 9.

Although section eleven of article two stated that the governor "shall nominate, and by and with the advice and consent of the Senate, appoint all civil and military officers of the State . . .," the power of appointment was so reduced as to render almost null the governor's influence over the administrative officers. He was totally stripped of the power to judge of the suitability of candidates for all the principal offices of the state, and of appointing them, by and with the advice and consent of the Senate. Almost all officers, judicial and administrative, formerly appointed by the governor, were henceforth made elective by the people.⁸⁴ The only vestige of his formerly great power of appointment was the power to appoint the secretary of state⁸⁵ and some minor officers, and the power to fill vacancies during recess of the legislature.⁸⁶ As his appointing power was reduced, the governor's power of removal became correspondingly less, although he could still remove military officers and all civil officers who received appointments from him for a term of years.⁸⁷ Several causes operated to produce this change; namely, a general feeling that the three powers of government were not separate and distinct from each other under the old method of appointing judicial officers; the opinion that the people were just as able to judge of the qualifications of candidates for all offices as the governor; and the disposition to restrain the appointing power of the governor in order to prevent its injurious influence upon popular elections, and its growing tendency of abuse.⁸⁸

In relation to the legislature, the governor's functions were increased slightly. He was given the legal power to send messages to it, recommending such measures as he should judge necessary and expedient.⁸⁹ The governor was also given power to convene the legislature or the Senate alone on extraordinary occasions. He could also, in emergencies,

⁸⁴ See *ibid.*, arts. IV, V, VI, VII.

⁸⁵ *Ibid.*, art. II, sec. 22.

⁸⁶ *Ibid.*, sec. 12. See *State v. Wayman*, 2 Md. 254.

⁸⁷ *Ibid.*, sec. 15.

⁸⁸ Hinkley, *op. cit.*, p. 77.

⁸⁹ Constitution of 1851, art. II, sec. 18. Cf. p. 65 of this study.

direct the legislature to meet at some other place than the state capital.⁹⁰

The governor, then, under the Constitution of 1851, became a purely executive officer. He was nominally and apparently the head of the executive; in fact, he was little more than one among equals, for the chief administrative officers were directly elected by the people, like himself, and had no constitutional superior. Thus, he lost his administrative authority, and in the same way, his judicial authority. His power in relation to the legislature was augmented somewhat by the express provisions for sending recommendations, but these legislative powers were weakened by the absence of the veto.

THE CONSTITUTION OF 1864

The Constitution of 1851 was framed and passed in an irregular and unsatisfactory manner, unpopular with a great number of people (as well as its framers) who demanded a just and more modern instrument. In 1858 there was a movement for a constitutional convention; but on a vote ordered by the legislature, it was rejected by the people.⁹¹

Matters rested until 1862, when the emancipation movement in Maryland again brought about a recurrence of the demand for a convention. With many of the anti-slavery group, an amendment abolishing the relation of master and slave⁹² would have sufficed, but the radical wing of the Union Party in Maryland was sharp enough to see the advantage of combining emancipation sentiment with the dissatisfaction with the constitution; and, instead of favoring an amendment, declared for a new constitution, May 28, 1862.⁹³

If the constitution of 1851 was framed and adopted in an extra-legal and revolutionary manner,⁹⁴ the constitution

⁹⁰ *Ibid.*, sec. 16.

⁹¹ William S. Myers, "The Maryland Constitution of 1864," *Johns Hopkins University Studies in Historical and Political Science*, XIX, 353-445.

⁹² Constitution of 1851, art. III, sec. 43.

⁹³ Myers, *op. cit.*, p. 359.

⁹⁴ See note 74 of this chapter.

which superseded it was even more so. The radical wing of the Union Party, which was in complete control of the Maryland government, was determined to obtain success for its cause and to let nothing stand in its way.⁹⁵

The legal means of adopting a referendum on the propriety of calling a convention were subverted and illegal test oaths given at the polls. Judges of elections were given the widest discretion in determining who should vote, and they exercised this discretion to the detriment of voters not in favor of the convention or the new constitution.⁹⁶ Armed forces, Federal and State troops, were held in readiness to insure the complete success of the radicals.⁹⁷

By such means, the convention was constituted and the radical constitution framed and adopted. Even by such means, if it had not been for the absentee soliders' vote, the constitution would have failed of ratification, because it was voted down in the state itself.⁹⁸

By the terms of the new constitution the governor's powers and position remained practically the same. His election, term, and qualifications were changed not at all, but his salary was raised to four thousand dollars.⁹⁹

A new office was created, that of Lieutenant-Governor, who was to be elected at the same time as the governor, serve the same term, and was to have similar qualifications. His duties were: to act as the president of the Senate, vote in case of a tie, and to succeed to the governor's office when a vacancy occurred. His salary was to be the same as that of the speaker of the House of Delegates.¹⁰⁰

⁹⁵ The Democratic Party in the state was, at this time, practically dead. Myers, p. 362. For an account of the tumultuous history of these times in Maryland, see Scharf, III, chs. xlvii-xlix.

⁹⁶ Scharf, III, 579-580.

⁹⁷ *Ibid.*, p. 582.

⁹⁸ *Ibid.*, p. 597.

⁹⁹ Constitution of 1864, art. II, sec. 22. The gubernatorial election districts were omitted from this constitution. They were regarded as a useless and cumbersome institution.

¹⁰⁰ *Ibid.*, sections 6, 7, 9. Reason for this new provision: that it gave an additional popular feature to the constitution by making the people doubly sure of the choice of their chief executive, and brought the government in line with those of a majority of the states.

The Constitution of 1864 brought back some of the appointing power which the governor had lost in 1851, but the increase was not important enough to cause any great change in his status as an administrator. By the old constitution, justices of the peace were made elective by the people; but in the new one the governor was again granted their appointment with the advice and consent of the Senate. The power to remove justices was not given to him, however, but was placed in the hands of the judges having criminal jurisdiction in the cities or counties to which they were appointed.¹⁰¹

With the Senate, the governor was authorized to fill the new office of Superintendent of Public Instruction, appointive for a term of four years and not removable by gubernatorial action.¹⁰² In relation to the filling of vacancies in judgeships and the chief administrative offices, the governor's functions remained about the same as in 1851.¹⁰³

Several provisions of this constitution operated to give the governor some new and additional administrative duties. The governor, the comptroller, and the treasurer were constituted a Board of Public Works to supervise all public works in which the state was interested as stockholder or creditor. Acting in such a capacity, and with legal power, the Board was authorized to obtain rates of toll which would prevent any injury to the interest of the state.¹⁰⁴ In addition, the governor, with the Lieutenant-Governor, the Speaker of the House, and the State Superintendent of Public Instruction, was made a member of the State Board of Education. This Board was to perform such duties as the legislature should direct.¹⁰⁵

By the express terms of the constitution, the position of the governor in relation to the legislature was not altered, but

Debates, II, 1317-1319. A motion to abolish the office of Secretary of State and to give his duties to the Lieutenant-Governor was defeated. Proc. of the Convention, p. 493.

¹⁰¹ Ibid., art. IV, sec. 47.

¹⁰² Ibid., art. VIII, sec. 1.

¹⁰³ Ibid., arts. IV, V, VI.

¹⁰⁴ Ibid., art. VII, secs. 1, 2.

¹⁰⁵ Ibid., art. VIII, sec. 2.

following from his being constituted a member of several administrative boards, regulated by that body, he was subject to a certain amount of legislative control in the carrying out of his administrative powers.

As has been suggested above, the position of the chief executive in the Constitution of 1864 suffered no great departure from that of 1851. His slight increase in the power of appointment was of no particular importance, for the officers so appointed were not capable of being removed by him. However, as a component part of the Board of Education, he did have a certain amount of influence over the Superintendent of Public Instruction. In the convention a proposal was made to extend to the governor the power of veto, but this was speedily tabled as an unnecessary departure from the custom of the past.¹⁰⁶

¹⁰⁶ Debates, II, 898.

CHAPTER IV

THE CONSTITUTION OF 1867

The present Constitution of Maryland, aside from its subsequent amendments and changes, is the same as that framed in the Constitutional Convention of 1867. Generally speaking, and giving due consideration to the chaotic and tumultuous times in which it was made, the Constitution is a strong and fairly conservative instrument of government; and it is up to the average excellence of the contemporary documents in force in the other states. It has lasted and has worked fairly well up to the present time; sixty-three years after its promulgation.¹

With the framing of the last constitution, the powers of the governor of Maryland received their greatest advance. In the debates of the Constitutional Convention of 1864 very little argument was reported concerning the office of the Chief Executive; and, while there were no particular restrictions of executive powers and duties in the finished product of the Convention, at the same time, neither were there any important additions.² In fact, the Constitution of 1864 was framed with but two purposes in view; namely, to emancipate the slaves, and to keep the radical wing of the Union Party in power.³ Other than the provisions bringing about these and ancillary objects, very little change from the preceeding Constitution is noted.⁴

As we have seen,⁵ the Constitution of 1864 was adopted in

¹ The Constitution of Maryland, as in force at the present time, is published in the Maryland Manual edited annually by the Secretary of State.

² See Debates of the Constitutional Convention of 1864. Also, E. O. Hinkley's edition of the Constitution of 1864.

³ William Starr Myers, "The Maryland Constitution of 1864," Johns Hopkins Studies in Historical and Political Science, XIX, nos. 8-9. This monograph gives a detailed and accurate account of the political and social conditions in the state during the years 1863 and 1864.

⁴ Constitution of 1851. Hinkley's ed. 1855.

⁵ See above, ch. iii.

a highly dubious manner, which reflects considerable discredit upon the radical wing of the Union Party in Maryland.⁶ A narrow plurality of 375 out of a total of 59,973 votes cast at the election had been secured only by the somewhat doubtful expedient of allowing the votes of the Maryland soldiers in the field to count, their almost unanimous approval altering the adverse vote in the state itself. "But the Union Party leaders felt no uneasiness as far as the future was concerned, for the Constitution of 1864 was designed, rightly or wrongly, not only to free the slaves, but to secure a permanent hold of the party in power."⁷

In order to remain in power, the Union Party based its hopes on several stringent provisions of the Constitution which were purposely designed to exclude all Southern sympathizers and other disloyal persons from the franchise.⁸ No one not a Radical could conscientiously take the test oath applied to persons applying for registration; and, moreover, the judges of elections had been given the dangerous power to decide as to what was "conclusive evidence" of the right of a person to vote.⁹ Scharf says: "The Constitution of 1864 . . . disfranchised by *ex post facto* enactment, some

⁶ The Republican Party did not exist under its present name in Maryland until at least a year after the close of the Civil War.

⁷ William Starr Myers, "The Self-Reconstruction of Maryland, 1864-1867," Johns Hopkins Studies in Historical and Political Science, XXVII, 9.

⁸ Constitution of 1864, art. I, secs. 2, 4, and 7; art. III, secs. 41, 47.

⁹ Acts of 1865, ch. 174. This law provided for the registration of voters in pursuance of the constitution. It provided that the governor was to appoint three citizens as registers for each ward or election district; also, three men to register the soldiers and sailors. From the registration lists they were to exclude all disloyal persons and might even refuse to permit them to register after taking the oath of allegiance. See B. C. Steiner, *Citizenship and Suffrage in Maryland*, pp. 47-48. The intent of the act seems to have been well summed up in an editorial of the *Baltimore Sun* of July 11, 1865, as follows: "It will be seen that the question of the right of suffrage under the Constitution and the law, is left entirely to the discretion and judgment of the various officers of registration, who are to be appointed by the Governor . . . from which judgment there is no appeal—and the disqualification is perpetual unless the person is restored to civil rights through military service or a vote of two-thirds of all the members elected to each House of the General Assembly." Quoted by Myers, *op. cit.*, p. 12.

two-thirds of the citizens of the State.”¹⁰ In the opinion of one writer, an overwhelming number of those disfranchised were Democrats.¹¹ The same writer goes on to say that a part of this number was rightly denied the right to vote. He says:¹²

It was, in fact, neither right nor expedient that those who had been in arms against, or in active opposition to, the United States government should have the ballot given to them for some years to come, the length of time to be determined by the actions of the ex-Confederates, who should have opportunity to show their acceptance of the new situation. The radicals in the Union Party of Maryland had, therefore, a large measure of justice on their side. It was rather the extremely sweeping character of the methods used, and their efforts, at times, to maintain party supremacy by unjust means, that should be condemned.

The first serious move against the constitutional disqualification and the stringent registry law was made in the latter part of 1865. Legal means of redress were used as tests before a definite political agitation was developed. Two important cases were tried, but availed the plaintiffs nothing.¹³ Getting no redress from the courts, the only thing left to do was to appeal to the sense of public justice and political right of the people. From now on the Democratic party adopted this method. Thus began the organized movement which finally succeeded in overturning both the registry law and the Union Party.¹⁴

The Democratic Party held conventions all over the state assiduously supported by the Party newspapers. It was held by the party “that the makers of the Constitution of 1864 went beyond the necessities of the occasion in putting into the permanent organic law of the State provisions which were needed to meet a temporary condition only.”¹⁵ A definite attempt was made to influence the legislature to remove all disabilities under a general law by a two-thirds vote as

¹⁰ History of Maryland, III, 668.

¹¹ Myers, op. cit., p. 33.

¹² Ibid.

¹³ Hardesty v. Taft, 23 Md. Reports, 512; Anderson v. Baker, 23 Md. Reports, 531.

¹⁴ Myers, op. cit., p. 43.

¹⁵ Ibid., p. 44.

required by the Constitution.¹⁶ A petition was presented to the General Assembly on January 26, 1866; but while the legislature respectfully listened to the prayer, it refused to grant the amnesty or to repeal the registry law.¹⁷ The legislature's whole thought seems to have been directed "to the surest means of retaining political power rather than to the establishment of justice, the increase of fraternity, and to the promotion of public welfare."¹⁸

The Democratic leaders, however, continued their agitation and propaganda, and soon a great number of the more conservative Unionists, weakening in their support of radical principles and desiring to see justice done, aligned themselves with the Democratic cause.¹⁹ Among the leaders of this schism in the Union Party in Maryland, and most important of all, since it was principally through his efforts that the intent and purpose of the registry law was largely nullified, was Governor Thomas Swann.²⁰

According to the registry law, the executive was empowered to appoint the registers and judges of election. Governor Swann now began to appoint new registration and election officials all over the state and to instruct them "to interpret the oath and registry law as liberally as possible and to let

¹⁶ Ibid.

¹⁷ Ibid., pp. 48-49.

¹⁸ Frederick Republican Citizen, February 2, 1866. Quoted by Myers, *op. cit.*, p. 49.

¹⁹ An important factor in this situation was the antagonism between the President of the U. S. and Congress. The Democrats and Conservative Unionists supported Johnson and the radicals supported Congress. The Conservative wing began to break away from the Union Party in 1866 when the Fourteenth Amendment passed Congress. A definite alliance was formed of all forces opposed to the radicals as then constituted in Maryland. This alliance took the name of "Democratic-Conservative Party," which became, in 1867, the "Democratic Party."

²⁰ Myers, p. 56. General F. C. Latrobe, son-in-law of Gov. Swann, told Mr. Myers that, "the registration law and the negro question were the causes of Swann's secession from the Union Party." Then, too, according to Hon. James R. Brewer, Mr. Myers said that there existed a definite understanding between Swann and the leaders of the Democratic Party whereby he should have the office of United States Senator in return for his assistance in the repeal of the registry law. Ibid., pp. 56-57; 87-93.

the people register and vote.”²¹ As a result of this action of the governor, a large number of Democratic voters were registered and secured in their right to the suffrage.²²

The liberal enforcement of the registry law was the beginning of the end of the Radicals, for, at the fall elections of 1866, they were put to route and the Conservative and Democratic candidates were elected, securing a two-thirds majority in both houses of the Assembly. “It was a quiet revolution,” writes Myers, “and Maryland was about to reconstruct herself on a basis which has lasted almost intact up to the present time.”²³

The Assembly which met on January 2, 1867, was the only one in five years that was able to assert, with any degree of truth, that it represented the people of Maryland.²⁴ Correctly called “The Reform Legislature,”²⁵ the law-making body immediately set itself to the work of amending or abrogating the oppressive legislation of the preceding five years. It aimed to complete the political transformation of the state. Acting in pursuance of section 4, Article I, of the Constitution, which provided that any disqualified person might be “restored to full rights of citizenship by an act of the General Assembly passed by a vote of two-thirds of the members elected to each House,” a bill was enacted into law restoring full civil rights to all persons affected by that article.²⁶ The old registry law was modified by deleting its obnoxious provisions,²⁷ and a bill was passed repealing an act of 1864 requiring jurors to take the test oath.²⁸ However, it was the almost unanimous opinion of the majority coalition in the

²¹ Myers, p. 64. See also, Scharf, III, 679-680.

²² Myers, p. 64.

²³ “The Self-Reconstruction of Maryland, 1864-1867,” p. 77. See Scharf, III, 685.

²⁴ Scharf, III, 689.

²⁵ Myers, op. cit., ch. iv.

²⁶ House Journal, 1867, pp. 38, 51-55, 87-88; Senate Journal, 1867, pp. 101-104.

²⁷ House Journal, 1867, pp. 503, 625, 627, 919; Senate Journal, 1867, pp. 426, 429, 559.

²⁸ House Journal, 1867, pp. 436, 1137-1138; Senate Journal, 1867, pp. 153, 201, 235, 813.

Assembly that "the permanency of the reforms made could not be guaranteed or the entire reconstruction of the State completed unless an entirely new constitution were drafted."²⁹ Governor Swann had recommended such a step as exigent in his message,³⁰ and the Assembly promptly entered upon its fulfilment.

The convention bill was reported in the House on January 10, and passed on February 6.³¹ In the Senate, the bill was reported unfavorably from committee on February 16, but the minority report was brought to a vote on March 16 and passed. However, it failed to secure a two-thirds vote as required by the Constitution,³² and was declared rejected by the Lieutenant-Governor. An appeal was immediately taken from the action of the chair and negatived. After reconsideration and heated debate, the bill was again brought to a vote and passed with the necessary two-thirds vote of all the senators, on March 20.³³

As finally passed, the convention bill provided that an election was to be held on April 10, at which every person entitled to vote for delegates to the General Assembly should vote on the question of a call for a convention to frame a new constitution and form of government. At the same time, members of the Convention were to be voted for, to have the same qualifications as required for members of the House of Delegates. It further provided, that the governor should declare the result; and, in case the vote was favorable, the Convention should meet at Annapolis, May 8, 1867. The power was given to the Convention to make rules and regulations for the submission of the new constitution to the people. Finally, the governor was to receive the returns of the election on the constitution and to issue his proclamation if the same were adopted.³⁴

²⁹ Myers, *op. cit.*, p. 94.

³⁰ House Documents, 1867, Document A.

³¹ House Journal, pp. 10, 12, 51, 276-279, 1053.

³² Art. XI, section 2, the Constitution of 1864.

³³ Senate Journal, pp. 158, 247, 510, 517-520, 540, 717.

³⁴ Proceedings of the Maryland State Convention, 1867, pp. 38-41.

Not without considerable opposition on the part of the Republicans,³⁵ the provisions of the convention bill were carried out. A majority of over ten thousand votes was cast in favor of a convention, and the delegates met at Annapolis on the date stipulated.³⁶ The Convention completed its work on the seventeenth of August and adjourned *sine die*. At the referendum election on September 18, the new Constitution was adopted by a majority of nearly twenty-five thousand votes, going into effect on October 5.³⁷ "Thus after a hard struggle, but by the use of lawful and peaceful means alone, did the people of Maryland regain their liberties and restore a republican government in the State."³⁸

Everyone of the Constitutions of Maryland has marked some changes in the position and power of the governor. In some instances, these changes have been of a retrogressive character; but, on the whole, the tendency has been to strengthen the position of the governor as a component part of the State Government, and to augment his powers and prerogatives. In none of the Constitutions is this tendency more marked than in the Constitution of 1867.

By the terms of the new Constitution, some slight alterations, as compared to that of 1864, may be noticed in the time

³⁵ Myers, *op. cit.*, pp. 105-112. The Republicans took no part in the election for delegates to the Convention other than a general vote against the call for a convention. Thus, the Convention was made up of only Democratic-Conservative members.

³⁶ It is not generally known that those opposed to the calling of the Convention filed proceedings in the Superior Court of Baltimore City in the hope of preventing the election. The application for an injunction was rejected and the bill dismissed. It is interesting to note that Johns Hopkins helped to file the bill. See Alexander M. Rogers et al. v. the Sheriff and Police Commissioners of Baltimore City, reported in Debates of the Maryland Constitutional Convention of 1867, compiled by Phillip B. Perlman, pp. 9-27.

³⁷ It is a curious fact that each one of the Constitutions of Maryland, with the exception of that of 1776, was made in an illegal manner. Each convention bill violated the revision clauses of the preceding Constitution. See the following studies in the Johns Hopkins Studies in Historical and Political Science: J. W. Harry, "The Maryland Constitution of 1851," XX, 387-464; W. S. Myers, "The Maryland Constitution of 1864," XIX, 354-445; and W. S. Myers, "The Self-Reconstruction of Maryland, 1864-1867," XXVII, 94-96.

³⁸ Scharf, III, 702.

of electing the governor, his qualifications, and succession in case of death, disqualification, removal, etc.

The term of office of the governor was changed from three to four years in 1851, and it so remains. By this change the expiration of it is made to coincide with every second term of the Delegates, they being elected biennially. Under the Constitution of 1864, the elections were held in that year and every four years thereafter; but, by the terms of the Constitution of 1867, the elections were held that year, and every four years thereafter. Thus, the gubernatorial elections are now held the year before the Presidential elections instead of in the same year, and so the elections for Delegates are held in the years intervening between those for Congressmen, instead of in the same years. Whether or not the framers sought to bring about by those means an avoidance of the controversy with, and the influence of, Federal elections, is not known.³⁹

The Constitution of 1864 provided that a candidate for governor must have been for five years a citizen of the United States and for five years a resident of Maryland. One of the members of the Convention ⁴⁰ objected to this section and said that "... under this section a negro was eligible to the office of governor, as they were all citizens of the United States . . ."; and, to remedy this he offered certain amendments. The amendments were adopted and the section now stands as follows: "A person to be eligible to the office of Governor must have attained the age of thirty years, and must have been for ten years a citizen of the State of Maryland, and for five years next preceding his election a resident of the State and a legal voter therein."⁴¹

³⁹ Constitution of 1867, art. II, sec. 2; art. III, sec. 7. *Debates of the Maryland Constitutional Convention of 1867*, pp. 176-177; 181-182. For the revisions in the election process, showing existing practices, see Const., 1867, art. XVII (added by Acts of 1922, ch. 227, adopted November, 1922). See also ch. v. of this study.

⁴⁰ Mr. Henry W. Archer, from Harford County. *Debates*, p. 179.

⁴¹ Art. II, sec. 5. A motion to reestablish the device of electing the governor in succession from three gubernatorial districts was dropped as a useless and cumbersome contrivance calculated to beget division. *Debates*, pp. 177-179.

The old Constitution provided that the Lieutenant-Governor should succeed to the duties of the governor's office in case of a vacancy in that office; however, as the office of Lieutenant-Governor is dispensed with in the new Constitution, a new mode of succession is provided for. In case of such a contingency, the president of the Senate shall succeed until a new governor is elected by the General Assembly. If it should happen that, for any reason, the president of the Senate should be unable to succeed, then the duties shall devolve upon the speaker of the House of Delegates.⁴²

Several significant additions and changes were made in the executive powers and duties of the governor. Section nineteen of article two of the Constitution of 1864 simply made it the duty of the governor to examine, semi-annually, or oftener, the bank book, account books, etc., of the Treasurer and Comptroller. The present corresponding section adds that the governor shall examine *under oath*, the Treasurer and Comptroller ". . . on all matters pertaining to their respective offices. . . ." ⁴³ As will be shown later, this is only one phase of the increased control given to the chief executive over the fiscal affairs of the government.⁴⁴

With regard to appointments to office, the governor is re-invested with the power to "nominate and, by and with the advice and consent of the Senate, appoint all civil and military officers . . . whose appointment or election is not otherwise herein provided for; unless a different mode of appointment be prescribed by the law creating the office." ⁴⁵ Added to this general power of appointment, the governor is authorized to appoint, by and with the advice and consent of

⁴² Art. II, secs. 6, 7. The legislature is given full power under sec. 7 to provide by law for "any vacancy in said office not herein provided for . . . and if such vacancy should occur without such provision being made, the Legislature shall be convened by the Secretary of State for the purpose of filling said vacancy." This whole section is for the most part the same as in the Constitution of 1851, art. II, sec. 8.

⁴³ Sec. 18, of art. II. See Debates, p. 192.

⁴⁴ See below, ch. v.

⁴⁵ Art. II, sec. 10.

the Senate, the State Librarian⁴⁶ and the Commissioner of the Land Office.⁴⁷

Offering several interesting reasons for this increase in gubernatorial appointing power, the argument of one of the members of the Convention is herein given. Mr. Henry F. Garey, of Baltimore, said, in brief: The Democratic Party, in its reforms, by making nearly all the offices elective by the people, has done much to demoralize them. The desire for office which had been generated by this action has so taken hold of the people that it has weaned many of them from their occupations and caused much sorrow and trouble, and the Democratic Party is to blame for it by committing so much to the people. In 1851, the governor was almost stripped of his power of appointing to office; in 1864 the power to appoint justices of the peace was given back to him, and it has worked well. The people did not want to elect so many officers; they are satisfied now, and do not ask for the exercise of any more power. It is time to return to the old constitutional landmarks.⁴⁸ Another member of the Convention said that the experience not only of our own but of all the other states has proved that the policy of electing so many small officers by the people is most injudicious.⁴⁹

The concomitant power of removal is carried over with two important changes. The present constitution states that the governor may "remove for incompetency, or misconduct, all civil officers who received appointment from the Executive for a term of years"; whereas, the Constitution of 1864

⁴⁶ Art. VII, sec. 3. This officer was formerly elected by a joint vote of the two Houses of the General Assembly for a term of four years. Constitution of 1864, art. VII, sec. 4. There was a motion in the Convention to elect the Librarian by popular vote. Debates, pp. 369-372.

⁴⁷ Art. VII, sec. 4. The Commissioner was formerly elected by popular vote, Constitution of 1864, art. VII, sec. 3. See Debates, pp. 222, 328, 374-380, 413.

⁴⁸ Debates, p. 370. The power of appointing justices of the peace, by and with the advice and consent of the Senate, is carried over in the Constitution of 1867. The appointment to vacancies in these offices, however, must be made by the governor alone, and not by the governor and Senate. *Cantwell v. Owens*, 14 Md. 215 (1859).

⁴⁹ Isaac D. Jones, of Somerset County. Debates, p. 370.

specified officers appointed "for a term not exceeding two years."⁵⁰ This change is especially significant because it obviously broadens the range of the governor's removal power to include a much larger number of officers than was included under the old Constitution. In addition, the governor is given the power to remove, after hearing, the Comptroller or the Treasurer during recess of the Assembly, for incompetency, malfeasance in office, wilful neglect of duty, or misappropriation of the funds of the state and to appoint a person to serve out the unexpired term of the officer so removed.⁵¹

One of the new executive duties allotted to the governor is that of arranging the representation of delegates in the House. According to the Constitution of 1864, this was taken care of by the House itself. As this is a mere ministerial duty involving no questions of legislative policy, since the basis of representation is already provided for in the section of the Constitution immediately preceding, it is the writer's opinion that it is correctly so placed within the province of the executive department.⁵²

The most important change of all concerning the executive office does not, however partake of an executive or administrative character, but, rather, pertains to legislative matters. This was the granting to the chief executive of the power of veto, which existed, in 1867, in nineteen other states as well

⁵⁰ Const., 1867, art. II, sec. 15; 1864, art. II, sec. 17. (Italics are the writer's.) The power of removal of officers for incompetency or misconduct conferred upon the governor applies only to such offices as he has power to fill by original appointment for terms of years and does not embrace justices of the peace. In no case is the power of removal of any officers discharging judicial functions conferred upon the governor, except by Article 30 of the Bill of Rights, and sections 4 and 9 of art. 4 of the Constitution, upon an address of the General Assembly. *Cantwell v. Owens*, 14 Md. 215 (1859).

⁵¹ Art. VI, sec. 6. Both are elective officers: the former by the people, the latter by the General Assembly.

⁵² Art. III, sec. 5: "Immediately after the taking and publishing of the next National Census, or after any State enumeration of population, . . . it shall be the duty of the governor . . . to arrange the representation in said House of Delegates, in accordance with the apportionment herein provided for; and to declare, by Proclamation, the number of Delegates to which each County and the City of Baltimore may be entitled, under such appointment. . . ."

as in the National Government.⁵³ The words in which this power is given are nearly the same as in the Constitution of the United States. There is, however, a preamble in the Maryland provision, defining its use to be "to guard against hasty or partial legislation and encroachments of the Legislative Department upon the coördinate Executive and Judicial Departments," and three-fifths of each house may override the veto instead of two-thirds as in the Constitution of the United States.⁵⁴

The section conferring the veto power was reported out of committee to the Convention requiring a two-thirds vote of each House to pass a bill over the veto. Mr. Thomas F. J. Rider, of Somerset County, offered a substitute providing for a bare majority of the members present of each House.⁵⁵ This gentleman was in favor of the veto power being given the governor, but thought that, as it was a novel and untried thing in Maryland, he was not in favor of making it so absolute a power as that reported by the committee. Another member⁵⁶ thought a majority of the members present would not be sufficient; accordingly, he offered to amend by substituting a majority of all the members elected to each House. Mr. John F. Dent, of St. Mary's County, although opposed to the veto power, called the attention of the Convention to the twenty-fourth section of the Legislative Department, as reported by the committee, which provided that a majority of all the members elected shall be necessary to pass a bill and thus the amendment now pending placed no additional checks on legislation.⁵⁷

After listening to several arguments opposing the granting of the power at all, one delegate from Baltimore City⁵⁸ spoke very ably, even if somewhat abstractly, in its favor. He said that the great object of the veto was to protect minorities against the oppression of grinding majorities. The veto had

⁵³ Debates, p. 189.

⁵⁴ Art. II, sec. 17.

⁵⁵ Debates, p. 183.

⁵⁶ Mr. Bernard Carter of Baltimore City. Debates, p. 183.

⁵⁷ Debates, p. 183.

⁵⁸ Henry F. Garey. Debates, pp. 183-184.

been the salvation of the country and men could glance back and see where the veto had stayed disaster. Further, he remarked that there had never yet been an hour when this power was more desirable than now, when the voice of passion ran so high. This power is the sheet-anchor of the rights of an oppressed people. He alluded to the National Government, wherein a fanatical Congress passed law after law, and the vetoes of President Johnson were interposed to check the harsh legislation. He concluded with the hope that the amendment offered would be voted down and that almost unanimity would be required to override the veto. Mr. McKaig, of Alleghany County, concurred generally with Mr. Garey.⁵⁹

On the other side, another Delegate⁶⁰ did not think it necessary in Maryland's case to confer the veto power on the governor. He said that the reasons why the veto should be possessed do not apply in this state. In no case has any department attempted to encroach on the others. As to hasty legislation, it was already required that a majority of all the members elected should concur to pass a law. In the states which adopted the veto only a bare majority of the members present is required. The people of Maryland had never known this principle.

Another member,⁶¹ in support of the section reported by the committee, said that Mr. Rider's amendment would destroy its power and usefulness. He added that the most efficacious way of preventing unwise legislation is to place this power in the hands of the governor, and a majority of two-thirds of all the members should be necessary to overrule it.

Mr. Joseph A. Wickes, of Kent County, answered the speaker by saying that the veto had never been granted to any governor of Maryland and that there must have existed good and sufficient reasons for the withholding of this prerogative. He queried whether it would be a good or evil thing

⁵⁹ Debates, p. 184.

⁶⁰ Henry F. Farnandis, of Harford County. Debates, p. 184.

⁶¹ Mr. George M. Gill, of Baltimore City. Debates, pp. 186-187.

in this state. He believed that it would be held as a rod over the legislature to defeat the public will. He alluded to the fact that governors had been elected by the factions which controlled Baltimore City, representing only a minority of the voters.⁶²

One of the delegates from Caroline County⁶³ said that even though it might be a departure from a time-honored principle to adopt the veto, the Convention was here to address itself to the future and to throw safeguards around the rights of the minorities. He advocated the veto as a means of preventing the congestion of laws which mark every legislative session. It will compel the legislature to pass laws and present them to the governor in time, and for this very reason he was in favor of conferring this power.

Mr. John T. Stoddert, of Charles County,⁶⁴ recalled to the Convention that, in the nineteen states where the veto existed, there had never been a voice against it, and the experience of those states should be our example. He added that the placing of the veto in the hands of the governor would insure a definite responsibility, whereas the existing system did not. After Mr. Stoddert's speech a vote was taken on Mr. Rider's amendment, which was rejected, 67 to 24. A motion to strike out the whole section was negatived, 64 to 24.

It seems as if the Convention was deadlocked on the issue, until Mr. Stoddert very wisely offered a compromise. He moved to amend the section by providing that three-fifths of all the members elected shall be necessary to pass over the veto, instead of two-thirds of a majority.⁶⁵ The amendment was adopted, but subsequently reconsidered. After another amendment was proposed and rejected, Mr. Stoddert's amendment was again adopted and remains today the law of Maryland.⁶⁶

⁶² Debates, pp. 187-188.

⁶³ Dr. Charles E. Tarr. Debates, p. 188.

⁶⁴ Debates, pp. 189-190.

⁶⁵ Ibid., p. 191.

⁶⁶ Ibid., p. 192. In the debates on the veto power, it is significant to note that, with but few exceptions, the principal opponents of the section were delegates from the more conservative counties. These men feared that Baltimore City would secure control of the legislature.

Thus, as we have seen, the Constitution of 1867 greatly altered and enhanced the power of the governor both legislatively and administratively. In 1851, the governor's office was stripped of its important prerogative of appointing judges, by and with the advice and consent of the Senate, and this change has been retained.

The new constitution, however, gave the chief executive a very much increased control over the fiscal officers of the state. Mentioned above, the duty of the governor to examine the books of the Comptroller and the Treasurer, imposed in 1851 and 1864, is continued with the further duty of examining both of these officers *under oath*. This stipulation strikingly adds to the supervisory powers of the governor over some of the administrative officers, especially when the constitution, at the same time, endows him with the power to remove these elected officials during the recess of the General Assembly for incompetency, malfeasance in office, wilful neglect of duty, or misappropriation of the funds of the state.⁶⁷ Evidently, this latter provision was inserted in order to guard against any defrauding of the state during the time when the legislature was not meeting and could not act immediately. But it represented a distinct advantage to the executive, since an appointment made in such an exigency was not temporary only, but ran for the unexpired term of the officer so removed.

In addition, the appointment of two officers formerly elective was reinvested in the governor: the Commissioner of the Land Office, and the State Librarian.⁶⁸ It would seem that this was the beginning of a return to the governor of his former large appointing power before 1851. The debates on this subject in the constitutional convention plainly exhibited the sentiments of some of the members in favor of a reform of the injudicious and rather indiscriminate manner of popularly electing almost all of the executive and adminis-

⁶⁷ Constitution of 1867, art. VI, sec. 6.

⁶⁸ The former was elected by the people and the latter by the legislature.

trative officers. In the years to follow, the General Assembly, wary and dubious of the ability of the people to judge the competency of their officers, came to rely more and more upon the governor, and placed the appointment to many new offices in his hands, by and with the advice and consent of the Senate.

The greatest advance in the position of the governor was the granting of the new power of veto. Conferred rather late in the constitutional history of the state, it was to have the effect, in later years, of making the governor more than an executive officer, indeed of making him a most important cog in the legislative machinery. There are several reasons which might be assigned for the conferring of the executive veto: (1) By the middle of the nineteenth century, the General Assembly had lost some of its prestige as the responsible representative of the people by its continued and enormous "... extravagances in pledging the credit of the State for unwise and ill-managed public improvements." Consequently, the veto was looked to as a check upon the legislature to prevent this unwise action on its part. (2) Secondly, the enormous power of the Republican legislature and its tyrannical use of that power in Civil War and Reconstruction times rather turned the people away from the law-making body and toward the executive as the guardian of their interests. (3) Thirdly, as stated in the debates of the convention, the veto was advocated as "a means of preventing the congestion of laws which mark every legislative session. It will compel the legislature to pass laws and present them to the governor in time."⁶⁹ (4) Fourthly, and lastly, the example of the great number of other states wherein the veto power had been granted to the governor.

The veto in the other states, adopted in their later constitutions, has been conferred upon the governor for substantially the same reasons as in Maryland. The separation of

⁶⁹ The writer would like to call attention to the fact that the veto power has not had this effect, certainly during the last thirty or so years, although it may have had a beneficial effect immediately after its adoption.

powers theory, as expressed in the early constitutions, was now supported by the supplemental doctrine of "checks and balances." Maryland was one of the last of the original states to adopt the veto; but subsequently all of the new states followed suit, until today North Carolina stands alone as the one state whose constitution does not make provision for it.

CHAPTER V

THE GOVERNOR AS CHIEF EXECUTIVE OF MARYLAND

In the preceding chapters an attempt has been made to present a fairly comprehensive account of the development of the governor's position from colonial times to the adoption of the last constitution for the State of Maryland. The present and succeeding chapters will be devoted to the task of presenting in somewhat close detail an account of the governor's powers and duties as they exist today under the Constitution of 1867 and the laws passed in pursuance thereof.

NOMINATION AND ELECTION

As we have seen, the governor, under the first Constitution, was elected annually on joint ballot of the two houses of the General Assembly.¹ The members of the governor's council were likewise elected by the legislative body. However, by the constitutional amendment of 1837, the whole method of electing the governor was revised. Following the general trend in the other states, the executive was made elective by popular vote for a term of three years, the council was abolished, and the whole executive power of the state was vested exclusively in the governor.² From that year on,³ the governor of Maryland has been elected by the eligible⁴ voters of the state, thus withdrawing the selection of the

¹ Constitution of 1776, art. XXV. See, also, ch. iii of this study.

² Acts of 1837, ch. 84.

³ In the Constitutional Convention of 1851, there had been a motion to elect the governor by means of an electoral college, but this motion was quashed. Debates, I, 455.

⁴ Although counted as one of the "conservative" states, Maryland was one of the first states to grant universal manhood suffrage without property qualifications. "That every free white male citizen of this State, above twenty-one years of age, . . . having resided twelve months within this State, and six months in the county, or in the city of Annapolis or Baltimore, next preceding the election at which he offers to vote, shall have the right of suffrage . . ." Art. XIV, of the Amendments to the Constitution of 1776 (1810). By a preceding amendment, property qualifications of candidates for office were abolished. Art. XII (1810).

chief executive from the legislature and transferring it to the people.

Prior to the opening of the twentieth century, candidates for the gubernatorial office in Maryland were nominated in party conventions according to the rules and regulations of party usage, a method used generally throughout the United States.⁵ In the early years of the present century, however, many of the states adopted the direct primary election, in order to combat the evils and defects of the convention system and to promote larger and more direct popular control over the governments.⁶ In the years 1908-1910, Maryland, following the lead of her sister states, adopted the direct primary for all state-wide elections, but retained the mechanical outline of the convention system for the nomination of candidates for the governorship.⁷

Under the present primary election laws, the candidate for the office of governor in each party is nominated by a party convention made up of delegates elected in primaries by the direct vote of the registered voters belonging to the political party of which the candidate is a member, and whose nomination he is seeking. The ballots in such cases contain the names of the gubernatorial candidates and delegates to the party conventions. In case there are only two candidates for office, the one receiving the highest vote in any county or legislative district receives the vote of the delegates from such county or district in the state convention. But in case there are more than two candidates for the governor's office, each voter is permitted to indicate his first and second choice by placing a cross-mark in the squares provided on the ballot.

After the delegates have been elected and instructed, the convention is called and the balloting begins. The several delegations are required to cast their vote according to the

⁵ Scharf, III, 196.

⁶ Mathews, *State Government*, pp. 110-122; Merriam, C. E., *Primary Elections*, *passim*. The direct primary is now found in some form in all but two or three states. Mathews, *op. cit.*, p. 110.

⁷ Bagby's *Annotated Code of Maryland* (1924), art. 33. Hereinafter referred to as "An. Code."

instructions received in the primaries; and, if the result of the first ballot shows that there has been no nomination by a majority vote, the candidate receiving the lowest vote is dropped and the delegations so voting for such candidate are compelled to cast their vote on the second ballot for the candidate who is the second choice of their districts. If no nomination is made on this ballot, then the same process of dropping the lowest candidate and transferring the votes of the delegates voting for him to their second choice is continued until a nomination is made. Only after a delegation has exhausted its first and second choices may it vote without instruction for any candidate among those left before the convention.⁸

Thus, Maryland has retained the form, at least, of the convention system for the nomination of governor; but, to all intents and purposes, the system operates like the direct primary in the other states, the nominations being made indirectly by the registered voters of the state through their instructed delegates.⁹

According to the terms of the Constitution of 1867, an election for governor was to be held on the Tuesday next after the first Monday in November in the year 1867, and on the same day and month in every fourth year thereafter.¹⁰ It was, most likely, deemed best that the elections for governor and delegates be held in the odd years in order not to conflict with the national elections which are held in the even years.¹¹ This system prevailed for over a half century until the Quadrennial or Fewer Elections Amendment was passed in 1922.¹²

⁸ An. Code, art. 33, sec. 203.

⁹ For the provisions of the law relating to independent candidates, to nominations without the intervention of a convention, and to nominations by minor parties, see An. Code, art. 33, secs. 49, 50, 51 and 218.

¹⁰ The term of office for the governor was set at four years by the Constitution of 1851, art. II, sec. 1, and continued in the succeeding constitutions.

¹¹ Hinkley's Constitution of 1867, p. 125 (note); Debates of the Md. Constitutional Convention of 1867, pp. 176-177, and 181-182. Cf. Acts of 1853, ch. 134.

¹² Acts of 1922, ch. 227, adopted at the November election of 1922 and listed as art. XVII of the Constitution.

In pursuance of the terms of this amendment, the governor, members of the Assembly, and other state officers, are now elected in the even years between presidential elections.¹³ In addition, all state officers elected by the qualified voters (with certain exceptions), and all county officers so elected, now hold their offices for terms of four years. The purpose of this change was, in the words of the amendment: "... to reduce the number of elections, by providing that all State and county elections shall be held only in every fourth year, and at the time now provided by law for holding congressional elections."¹⁴ It was not deemed inadvisable to hold the elections in the same years as congressional elections since experience had shown that the latter do not have any appreciable influence upon state elections.¹⁵

The elections for governor, then, occur in the even numbered years between Presidential elections, and take place on the same day and month at the place for voting for delegates to the General Assembly.¹⁶ Every person qualified and entitled to vote for delegates is so qualified and entitled to vote for governor.¹⁷ After the election, the returns are addressed, under seal, to the Speaker of the House, and delivered to him by the Secretary of State at the commencement of the next ensuing session of the Assembly.¹⁸ At the meeting of the Assembly, the Speaker opens the returns in the presence of both Houses; and the person having a plurality

¹³ Art. XVII, sec. 3. To carry out this plan, the amendment stipulated that all officers elected at the election of November, 1923, for terms of office hitherto fixed by law at two, four, or six years should hold office for terms of three years; and all such officers thereafter should have a tenure of four years. Cf. ch. iv of this study.

¹⁴ *Ibid.*, sec. 11. The change in the tenure of members of the House relieved the governor from the necessity of meeting a new house every two years.

¹⁵ *Baltimore American*, August 3, 1921.

¹⁶ Art. II, sec. 2, of the Constitution.

¹⁷ *Ibid.*

¹⁸ *Ibid.*, sec. 2. The regular sessions of the Assembly are held on the first Wednesday of January every second year, unless convened by proclamation of the governor. Art. III, sec. 14; art. XVII, sec. 6. All questions relating to election returns are determined by the House of Delegates. Art. II, sec. 4.

of votes,¹⁹ and being constitutionally eligible,²⁰ is declared elected governor.²¹

In the event of a tie between rival candidates for governor, the chief executive is elected by joint majority vote of the Senate and the House of Delegates.²² However, if two persons still have an equal number of votes, a second vote is taken by the two houses confined to the persons having an equal number. If still no election, then the governor is chosen by lot between those having the highest and equal number.²³

In case of the death, resignation of the governor, his removal from office, or other disqualification, the General Assembly, if in session, has the power to elect some other qualified person to fill the vacancy for the remainder of the term.²⁴ But, in case of a vacancy during the recess of the legislature, the line of succession runs from the President of the Senate to the Speaker of the House. If any vacancy should occur, however, for which the Constitution does not provide, that instrument declares that: ". . . the Legislature shall be convened by the Secretary of State for the purpose of filling such vacancy."²⁵

GENERAL EXECUTIVE POWERS

The Maryland Constitution, like the constitution of many of the other states, provides that ". . . the Executive power

¹⁹ Acts of 1856, ch. 183.

²⁰ "A person to be eligible to the office of Governor must have attained the age of thirty years, and must have been for ten years a citizen of the State of Maryland, and for five years next preceding his election a resident of the State, and, at the time of his election, a qualified voter therein." Const., art. II, sec. 5.

²¹ The governor elect takes office on the second Wednesday of January. Ibid., sec. 1.

²² The two Houses likewise determine questions of eligibility. Ibid., sec. 4.

²³ Ibid.

²⁴ Ibid., sec. 6.

²⁵ Ibid., sec. 7. For the salary of the governor from 1776 to 1849, see ch. iii, note 81. The Constitution of 1851 fixed it at \$3,600.00; that of 1864, at \$4,000.00; and that of 1867, at \$4,500.00, at which it still remains.

shall be vested in a Governor" ²⁶ Speaking generally, Professor Mathews says: ²⁷

This is a verbal inaccuracy, for the executive power is in reality vested not only in a governor but also in various other officers . . . established by the constitution or by statute. It is not strictly accurate to speak of the governor as *the* head of the administration, for there are many such heads though the governor is usually the most important and conspicuous head.

The opinion voiced in this quotation seems to apply in the case of the Maryland executive, for there are several other officers ²⁸ in the administration who are elected independently of him and over whom he has no complete control. Although the courts of Maryland have not construed this clause, it would seem that it is simply a distributive one and does not operate to vest in the governor any inherent powers or prerogatives. The courts in the other states have generally held to this viewpoint. As Mathews concludes: ²⁹

. . . the rule of delegated powers and strict construction has been nearly everywhere applied to the governor, so that legally he is not usually considered as having any particular power unless it is granted to him, in the constitutions or statutes, either expressly, or by necessary implication.

A general executive power found in the Maryland constitution is: that the governor ". . . shall take care that the Laws are faithfully executed." ³⁰ Like the foregoing stipulation, this clause has been referred to by the courts but not construed. ³¹ The court did say, however, in the case of *Harman vs. Harwood*, ³² that "In order to enable him to fulfill

²⁶ Art. II, sec. 1. This section was referred to, but not construed, in: *Miles v. Bradford*, 22 Md. 183; *Smith v. Thursby*, 28 Md. 258; *Harman v. Harwood*, 58 Md. 10; and *Cull v. Whelpley*, 114 Md. 90.

²⁷ *Principles of American State Administration*, p. 80.

²⁸ For example: Attorney-General, Comptroller, and Treasurer.

²⁹ *Principles of American State Administration*, p. 80. See also, *Field v. People*, 3 Ill. 79 (1840) and cases cited; Goodnow, *Principles of the Administrative Law of the United States*, p. 95; Beard, *American Government and Politics*, 1930, p. 563. Contra: *Keenan v. Perry*, 24 Tex. 253.

³⁰ Art. II, sec. 9. A similar clause was first used in the Pennsylvania constitution of 1776; and was later copied, in varying forms, in most of the other state constitutions as well as in the national constitution. Finley and Sanderson, *American Executive and Executive Methods*, p. 27.

³¹ *Cull v. Whelpley*, 114 Md. 90, and cases cited.

³² 58 Md. 10.

this duty, he is clothed with large and important powers," and then goes on to mention the powers of appointment, removal, and suspension of certain executive and law-enforcing officers. This statement would seem to indicate that the unsupported clause does not *per se* confer any power but that other powers must be conferred by the constitution or the statutes in order to give it any legal effect.

Quoting authority again: ³³

. . . the power comes into operation only as the result of some legislative enactment authorizing the governor to carry out or execute some particular provision of the statutory law . . . The governor's powers . . . have not usually been construed to extend so far as to enable him to take any specific action in the enforcement of the laws in the absence of any specific constitutional or statutory provision to that effect.

In carrying out the duty to "take care that the laws are faithfully executed," the governor, in this state, in extreme cases, may ". . . call out the Militia to . . . enforce the execution of the Laws . . .",³⁴ but usually he must depend upon the Attorney-General, State's Attorneys, and the local law-enforcing officers not completely under his control. It is true that the Attorney-General ". . . shall commence and prosecute . . . any suit . . . which the General Assembly or the Governor, acting according to law, shall direct . . .";³⁵ but the governor is limited by the fact that this officer is popularly elected and only removable for cause by conviction in a court of law.³⁶ In conclusion, then, the clause, to "take care that the laws are faithfully executed," is not so much a power as a duty, which is practically inoperative unless the cooperation of the state and local law-enforcing officers be secured.³⁷

³³ Mathews, *op. cit.*, p. 81. See also, Beard, *op. cit.*, pp. 492 ff.; Goodnow, *op. cit.*, pp. 95 ff. For the power of the president deduced from a similar clause, see *In re Neagle*, 135 U. S. 1.

³⁴ Const., art. II, sec. 8.

³⁵ *Ibid.*, art. V, sec. 3. Italics are the writer's.

³⁶ *Ibid.*, art. V, sec. 1. The State's Attorneys are likewise elected and removable for cause upon conviction in a court of law, or by vote of two-thirds of the Senate, on the recommendation of the Attorney-General. *Ibid.*, sec. 7.

³⁷ Compare, *Shields v. Bennett*, 8 W. Va. 74, 89 (1874), cited by Mathews, *op. cit.*, p. 82.

RELATION TO THE OTHER EXECUTIVE OFFICERS

Although the executive power of the state is vested in the governor, there are several other executive officers provided for by the constitution in whom some of the executive power is also vested. These are the Attorney-General, the Comptroller, the Treasurer, and the Secretary of State.³⁸ The relation of the governor to these officers is quite pertinent in so far as it is indicative of the decentralized character, though to a minor degree, of the Maryland Executive.

The executive officer of first importance, besides the governor, is the Attorney-General. He is elected on the same ticket as the governor by the qualified voters of the state for a term of four years.³⁹ The Constitution confers upon the governor the jurisdiction to decide as to both the qualifications and election of the person returned as elected to the office, as well in the case of a contest as where there is no contest.⁴⁰ But it is the duty of the governor to issue his commission to the person regularly and duly returned as elected, although such election may be contested.⁴¹

³⁸ Maryland does not have a lieutenant-governor. In Maryland, there are only three state executive officers elected at large, the governor, the attorney-general, and the comptroller. The treasurer is elected by the legislature. In four states, however, the governor is now the only state executive elected at large. These are: Maine, New Hampshire, New Jersey, and Tennessee.

³⁹ Const., art. V, sec. 1. See, also, Reiblich, G. K., *Judicial Administration in Maryland*, ch. vi. By the Constitution of 1776, the Attorney-General was appointed by the governor and council; the Constitution of 1851 abolished the office; that of 1864 provided that there should be such an officer elected by the people. In the Constitutional Convention of 1867, the Committee's report advocated the appointment of the Attorney-General by the governor and Senate, his tenure to continue during the term of the governor, by whom he should be appointed, and subject to removal by the governor for cause or upon conviction in a court of law. In the debate which followed, this section was agreed to; but, before third reading, an amendment was substituted providing that he should be elected by the people and subject to removal only upon conviction in a court of law. As the debates of this Convention have not been reported in full, one is unable to discover the reason for this change. *Debates*, pp. 145, 204-212, 423.

⁴⁰ Art. V, sec. 2; *Brooks v. Widdecomb*, 39 Md. 401; *Groome v. Gwinn*, 43 Md. 622-23; *Wells v. Munroe*, 86 Md. 449.

⁴¹ Art. IV, part I, sec. 11; *Ijams v. Duvall*, 85 Md. 261.

It is the duty of the Attorney-General, among other and sundry things relating to the General Assembly or officers of the state, to "... commence and prosecute or defend any suit . . . on the part of the State, which . . . the Governor . . . shall direct . . ." In addition, he is bound to "... give his opinion in writing whenever required by . . . the Governor . . . on any legal matter . . ." And the governor is forbidden to employ any additional counsel, unless authorized by the General Assembly.⁴² By act of 1916, chapter 560, the chief law officer of the state is annually required to send to the governor a report of the business and proceedings of the legal department, including a statement of all receipts and disbursements, and any recommendations that he may wish to make concerning needed legislation. In case of a vacancy in the office of Attorney-General, the vacancy "... shall be filled by the Governor for the residue of the term thus made vacant."⁴³ The Attorney-General may not be removed from office by the governor, but may be removed for "... incompetency, wilful neglect of duty or misdemeanor in office, on conviction in a court of law."⁴⁴

The Comptroller of the Treasury is likewise elected on the same ticket as the governor by the qualified votes for a term of four years.⁴⁵ Contested elections for this office are decided by the House of Delegates.⁴⁶ The legislature has the authority to prescribe the Comptroller's oath and to require a bond for the faithful execution of his duties.⁴⁷ The governor is given the duty, however, if necessary, to require the Comptroller to renew his bond. If he does not conform to this direction of the executive, he is disqualified; and the governor is "... required . . . to appoint a fit and proper person

⁴² Art. V, sec. 3.

⁴³ Art. V, sec. 6.

⁴⁴ Art. V, sec. 1; *Groome v. Gwinn*, 43 Md. 622.

⁴⁵ Art. VI, sec. 1. All but three of the States have a comptroller or auditor. This officer is popularly elected in all states except New Jersey, Tennessee, and Virginia, where he is elected by the legislature. Dodd, *State Government* (1928), p. 228.

⁴⁶ *State v. Jarrett*, 17 Md. 327.

⁴⁷ An. Code, art. 19, sec. 2. See notes to art. VI, sec. 1, An. Code. Also, *Thomas v. Owens*, 4 Md. 216; *Sappington v. Scott*, 14 Md. 54.

to fill the vacancy . . . according to the provisions of the constitution."⁴⁸

The Comptroller⁴⁹ is charged with the general superintendence of the fiscal affairs of the state and must make annually a report of his activities to the governor if the Assembly is not in session.⁵⁰ In addition, the books and papers of his office " . . . shall at all times be subject to the inspection of the governor and the members of the legislature";⁵¹ and the governor has the duty to examine the Comptroller *under oath* in all matters concerning his office and to inspect his accounts.⁵²

Concerning vacancies in the office of Comptroller because of death or otherwise, the governor, by and with the advice and consent of the Senate, has power to fill the office, the incumbency to continue until a new election and qualification of a successor.⁵³ But, during the recess of the Assembly, the governor has the power to remove the Comptroller for cause and after a hearing, and to fill the vacancy created by appointing another person in his place whose tenure continues for the unexpired term.⁵⁴ In the Constitutional Convention of 1867, concerning the power of the governor without senatorial concurrence to remove the Comptroller or the Treasurer for cause during a recess of the assembly, Mr. Lee, of Prince George's, thought that the governor ought not to be clothed with so large a power over elected officers whose functions are so important. An amendment was then proposed stating that the governor should be limited in this removal power by the Senate, even to being forced to call an extra session of that house. Other members objected, saying that this procedure would be too costly. Furious arguments ensued on both sides until a vote was taken by which the amendment was rejected, fifty to forty-seven.⁵⁵

⁴⁸ An. Code, art. 19, sec. 6.

⁴⁹ The Comptroller and the Treasurer jointly comprise the Treasury Department. Const., art. VI.

⁵⁰ An. Code, art. 19, sec. 9.

⁵¹ Ibid., sec. 19. Italics are the writer's.

⁵² Const., art. II, sec. 18.

⁵³ Art. VI, sec. 1. Thomas v. Owens, 4 Md. 220.

⁵⁴ Art. VI, sec. 6.

⁵⁵ Debates, pp. 414-415.

The Constitution provides for a Treasurer, the other member of the Treasury Department, who is appointed by joint vote of the two houses of the legislature for a term of four years concurrent with that of the Comptroller.⁵⁶ So in the case of the latter, this officer must also furnish a bond for the faithful execution of his duties.⁵⁷

The Treasurer is under the directive power of the Comptroller, the governor, and the Board of Public Works. He must render his accounts to the Comptroller; deposit the moneys of the state in such banks as he shall select with the consent of the governor, and renew his bond at the latter's request; and perform certain acts, when required, by the Board of Public Works.⁵⁸

In all cases of vacancy in the office of the Treasurer by death or otherwise during session of the Assembly, removal during recess of the Assembly, and removal for failure to renew bond, the governor has precisely the same power of removal and appointment as he has in the case of the Comptroller.⁵⁹

The Secretary of State is an appointive officer in Maryland, being appointed by the governor, by and with the advice and consent of the Senate, and continues in office, unless sooner removed by the governor, until the end of the official term of the latter.⁶⁰ Besides his various constitutional duties,

⁵⁶ Const., art. VI, sec. 1. See, *Archer v. State*, 74 Md. 426; An. Code, art. 95. Treasurers are chosen by the legislatures of four other states and elected by popular vote in all but one of the rest. In Virginia, by an amendment of 1928, the treasurer was made appointive by the governor. Dodd, *State Government* (1928), p. 228.

⁵⁷ An. Code, art. 95, sec. 2.

⁵⁸ *Ibid.*, sec. 4; secs. 3, 6; and secs. 30, 31, respectively. The Board of Public Works is made up of: the governor, the Comptroller, and the Treasurer. Const., art. XII, secs. 1 and 2.

⁵⁹ Const., art. VI, sec. 1; *ibid.*, sec. 6; and An. Code, art. 95, sec. 6, respectively.

⁶⁰ Const., art. II, sec. 22. The Secretary of State is included in that section of the Constitution which states that the governor may remove "... for incompetency, or misconduct all civil officers who received an appointment from the Executive for a term of years, and hence may only be removed for one of the causes herein set out, unless possibly with the consent of the Senate without cause." *Townsend v. Kurtz*, 83 Md. 342, 347.

the secretary must perform such duties as may be required by law, together with all clerical duty belonging to the executive department.⁶¹ All records and papers in his office must be authenticated by him, but no copy of a record or paper may be given out or certified by him of any order, entry, or action of the governor, without the approbation of the chief executive.⁶²

The governor thus has some element of legal control over each of the other chief executive officers. The Attorney-General, perhaps, is the only officer who stands almost completely independent of the governor by reason of his popular election, and especially because he cannot be removed except upon conviction in a court of law. This absence of gubernatorial removal puts him in a position unlike that of the other officers who may be removed by the governor for cause and after a hearing. It is true that the constitution and the laws place the attorney-general under the directive power of the governor to a certain degree, but this is not a guarantee that he will perform his duties to their fullest extent. He may, if he so wishes, prosecute a case listlessly or submit perfunctory and useless reports. Generally speaking, but perfectly applicable to Maryland, Professor Dodd writes:⁶³

No powers of the governor are of avail when he seeks legal advice from an independently elected attorney-general, who may hope to further his own political ambitions by the opinions he presents upon questions of public interest.

Perhaps the only method by which the Maryland governor may legally compel the attorney-general to act is by the slow and cumbersome procedure of court action;⁶⁴ but even in

⁶¹ Const., art. II, sec. 23.

⁶² An. code, art. 41, sec. 37. See, also, secs. 38 to 45 inclusive. The secretary of state has but few discretionary powers. His functions are, for the most part, ministerial and are conferred upon him by statute. In six other states, he is appointed by the governor and Senate. In three others, he is elected by the legislature; and in all other states by popular vote. Dodd, *State Government* (1928), p. 226.

⁶³ *State Government* (1928), p. 230.

⁶⁴ *Ibid.*, p. 230. See, *State ex rel. Fleming v. Crawford*, 28 Fla. 441 (1891). *Contra*, *State ex rel. Rosbach v. Pratt*, 68 Wash. 157,

such a contingency, mandamus will not lie to compel this officer to perform an act which is discretionary with him,⁶⁵ although the writ will lie in the case of a ministerial act.⁶⁶

Legally speaking, all of the above is perfectly possible, but it happens that in the last twenty-five or more years the relations between the Attorneys-General and the governors of Maryland have been fairly cordial and there have been no important differences between them. This has been brought about largely through the medium of the political party. The governors have been exceedingly fortunate in usually having the chief legal officer of the state of the same political faith as themselves.

The control which the governor wields over the other chief executive officers, the Comptroller,⁶⁷ the Treasurer, and the Secretary of State, is much more comprehensive and can be exercised with or without the influence of the party. Although the first two officers do not receive their offices from the governor, the latter's widespread power of removal is adequate sanction for the efficient and faithful execution of their duties. The executive's influence over the Secretary of State is quite extensive, due to the fact that this officer receives his appointment from, and may be removed by, the governor. The Secretary's duties are generally ministerial and he may exercise his discretion only infrequently.

It is very interesting to note at this point the various changes made in the Maryland constitutions in regard to the methods used in selecting the state executive officials. Under the first constitution, there were no state-wide elective officers. The governor, councillors, treasurers, and commissioners of the loan office were elected by the Assembly. This constitution was amended in 1837, and the governor, in response to popu-

in which it was held that mandamus will not lie to compel the attorney-general to perform the discretionary duty of commencing legal actions.

⁶⁵ *Green v. Purnell*, 12 Md. 329; *Gross v. Baltimore*, 111 Md. 543.

⁶⁶ *Magruder v. Swann*, 25 Md. 173.

⁶⁷ The Comptroller is not a mere ministerial officer and cannot be compelled by mandamus to perform any act which involves the exercise of judgment and discretion. *Green v. Purnell*, 12 Md. 329.

lar demand, was made elective at large; but no other officers were so elected.⁶⁸ By the constitution of 1851, the governor, comptroller, commissioner of lotteries, and commissioners of the land office were popularly elected. The legislature still reserved the right of electing the treasurer and the state librarian. The number of elective officers reached its peak under the constitution of 1864, by which five officers were elected at large; namely, the governor, lieutenant-governor, attorney-general, comptroller, and commissioner of the land office. The treasurer and state librarian were still elective by the legislature. This marked the greatest extent in Maryland of the democratic tendency to elect the most important executive officers. Under the present constitution, as has been noted, there are but three state executive officers so elected; but, in no one of the preceding constitutions has the governor been given such a large measure of control over them. The attorney-general remains the only officer who can be said to be at all independent of the chief executive.

RELATION TO THE ADMINISTRATION

The legal powers by means of which the governor exercises control over the administrative officers are those of appointment to office, supervision and direction while in office, and suspension or removal from office. At the beginning of the history of our state government, as has been noted, the governor was given wide powers of appointment; but, as he could act only with the consent of the executive council, and as the power of removal was vested elsewhere, the directive power of the executive over the administrative officers tended to be small. Although the constitution of 1851 contained the general provisions authorizing the governor to appoint all civil and military officers of the state with the consent of the Senate,⁶⁹ the power of appointment was so reduced as to render almost useless his influence over the administrative

⁶⁸ The executive council was abolished by this amendment.

⁶⁹ The amendment of 1837 abolished the council and made the governor's appointments dependent upon the advice and consent of the Senate.

officers. Almost all of the officers, judicial and administrative, formerly appointive by the governor were made elective by the people. "The only vestige of his formerly great power of appointment was the power to appoint the secretary of state and some minor officers, and the power to fill vacancies during recess of the legislature."⁷⁰ Although the general power of removal for cause of all civil officers who received appointments from the executive for a *term of years* was granted to the governor, it was for the most part only potential inasmuch as the appointing power was so restricted.⁷¹ By the terms of the Constitution of 1864, the power of appointment was increased, but this increase was not important enough to cause any great change in the governor's status as an administrator. Almost all of the old administrative officers remained elective, and but few new officers were provided for whom the governor might appoint. The general removal power was continued but with a significant restriction that the governor might remove only those officers who received their appointment for a term *not exceeding two years*.⁷² It remained for the Constitution of 1867 to invest in the governor large and important powers of appointment and removal, being largely a repudiation of the old method of electing almost all of the officers of the administration.⁷³

In Maryland, as in the other states,⁷⁴ the appointing power of the governor is not regarded as belonging to him as a result of the general grant to him of the executive power. In other words, the governor must find his authority to make appointments in the constitution or in the statutes. In *Baltimore v. State*,⁷⁵ it was held that:

Our form of government in its various changes has never recognized the power of appointment as an executive prerogative; the Constitution so far from treating it as an inherent executive power indicates that it belongs where the people choose to put it.

⁷⁰ Quoted from ch. iii.

⁷¹ Constitution of 1851, art. II, sec. 15.

⁷² Constitution of 1864, art. II, sec. 17.

⁷³ See ch. iv.

⁷⁴ See, *Field v. People*, 3 Ill. 79 (1840), and cases cited.

⁷⁵ 15 Md. 376. See also V Opinions of the Attorney-General of Maryland, 505; and *Cyclopedia of Law and Procedure*, XXIX, 1270.

The constitution makes specific provision for the appointment of only five officers⁷⁶ by the governor and the Senate, and none at all by the governor alone; hence, for the larger share of the governor's power of appointment one must look to the statutes of the legislature creating additional offices, for only as a result of statutory authorization does the general power of the governor become effective.

The general power of the governor of appointment to office is provided for by the present constitution in an "omnibus" clause which stipulates that he shall:⁷⁷

nominate, and by and with the consent of the Senate, appoint all civil and military officers of the State, whose appointment or election is not otherwise provided for; unless a different mode of appointment be prescribed by the law creating the office.

In addition, there are two more clauses of the constitution which confer the power upon him; namely,⁷⁸

In case of any vacancy during the recess of the Senate, in any office which the Governor has power to fill, he shall appoint some . . . person . . . to said office, whose commission shall continue in force until the end of the next session of the Legislature, or until some other person is appointed to the same office, whichever shall first occur; and the nomination of the person thus appointed during the recess, or of some other person in his place, shall be made to the Senate within thirty days after the next meeting of the Legislature.

And,⁷⁹

in case of death, resignation, removal or disqualification by reason of age or otherwise of any judge, the Governor shall appoint a person . . . who shall hold the same until the next General Election . . . when a successor shall be elected . . .

The appointing power thus conferred by these sections of

⁷⁶ These are: Secretary of State, Adjutant-General, State Librarian, Commissioner of the Land Office, and Justices of the Peace. Constitution, art. II, sec. 22; IX, 2; VII, 3; VII, 4; and IV, 42, respectively.

⁷⁷ Constitution of 1867, art. II, sec. 10. For legal decisions upon the power of appointment see: *Watkins v. Watkins*, 2 Md. 354; *Davis v. State*, 7 Md. 161; *Cantwell v. Owens*, 14 Md. 215; *Baltimore v. State*, 15 Md. 376; *Anderson v. Baker*, 23 Md. 531; *McBlair v. Bond*, 41 Md. 154; *Dyer v. Bayne*, 54 Md. 99; *Harman v. Harwood*, 58 Md. 1; *Kroh v. Smoot*, 62 Md. 175; *School Commissioners v. Goldsborough*, 90 Md. 193; *Sappington v. Slade*, 91 Md. 645; *Ash v. McVey*, 85 Md. 119; *Cull v. Wheltie*, 114 Md. 58; and *Riggin v. Lankford*, 134 Md. 153.

⁷⁸ Art. II, sec. 11. See, also, *ibid.*, sec. 14.

⁷⁹ Art. IV, sec. 5.

the constitution is original, secondary, and special; the original includes all civil and military officers whose appointment or election is not otherwise provided for; the secondary includes all vacancies occurring during the recess of the Senate in an office which the governor has power to fill; and the special includes such officers as are particularly provided for in the fifth section of the judiciary article.⁸⁰

In the first years of the operation of the state government under the Constitution of 1867, the legislature kept most of the appointing power to itself. It created offices and commissions from time to time and appointed their incumbents. There seemed to be a tendency to restrict the appointing power of the governor as much as possible. Complaining about this, Governor William T. Hamilton, in his message to the general assembly of January, 1884, said:⁸¹

The appointing power is one of the most important functions of government, and the rightful and consistent distribution of it is essential to its well ordered management, and there should be no irregular invasions of it. Under modern practices, the appointment of important officers . . . has been given indifferently to the Legislature, the Board of Public Works and to the Judiciary, and not in any wise connected with their respective and special functions. This is neither a consistent nor a wise policy. All chief officers not considered of sufficient importance to be elected by the people should be appointed by the Governor . . . The General Assembly should be divested of all appointing power foreign to its organization.

Besides appointment by the legislature, many offices were made appointive by the Board of Public Works which consisted of the Governor, Comptroller, and Treasurer.⁸² Governor Hamilton said that making these officers collectively responsible for the appointment of important officers was "reprehensible" and urged the abolition of the practice.⁸³ Several of the succeeding governors reiterated the general sentiment expressed by Hamilton, but it was not until after the beginning of the century that the governor's power of appointment was broadened to any considerable extent and

⁸⁰ *Magruder v. Swann*, 25 Md. 215.

⁸¹ Maryland Public Documents, 1884, pp. 63-64.

⁸² See, for example, Acts of 1878, ch. 178.

⁸³ Maryland Public Documents, 1882, Messages of the Governors, pp. 50-51.

extended beyond the appointment of a few unimportant officers and commissions.⁸⁴ It was about this time that commissions and boards were beginning to be utilized on a large scale throughout the United States as agencies to carry out the increasing number of laws by means of which the legislatures, due to popular demand, were attempting to regulate the complex economic and social conditions of modern life. It was almost impossible for the legislatures to appoint to all of these new agencies, or to place them on the ballot, so that, for these and other reasons, their appointment was from time to time vested in the governor, subject, for the most part, to confirmation by the Senate. Maryland followed suit, and from then on the appointing power of the governor increased rapidly.⁸⁵

Year after year, the legislature has created an ever-increasing number of offices and has turned their appointment over to the governor, until, at the present time, the chief executive has part in the appointment of about sixty-six offices, boards, and commissions with a total membership of over three hundred.⁸⁶ The legislature, on the other hand, has almost ceased being an agency of appointment. In fact, the Treasurer is the only officer who is now appointed by the general assembly. The Board of Public Works, which formerly appointed the State Auditor, Insurance Commissioner, and the Bank Com-

⁸⁴ *Ibid.*, 1906 and 1908, *passim*.

⁸⁵ The administration of Governor Frank Brown, 1892-1896, marked the beginning of a strong line of governors who were anti-organization and men of sound business ability. From that time on, in almost unbroken succession, the governors of Maryland stood out as leaders who refused to be dominated by the legislature or by doubtful elements of their parties. The people were doubtless tired of the machine politics characteristic of post-bellum days and were beginning to look to the governor as their champion against the legislature. It is possible that the legislature, warned by strong public opinion and moved by the insistences of the governors themselves, was coerced into vesting in the chief executive the power to appoint many of the new agencies of administration. Andrews, *History of Maryland, Province and State*, 1929, pp. 589-645; Bucholz, *The Governors of Maryland*, *passim*; and Kent, *The Story of Maryland Politics*, *passim*.

⁸⁶ These and the following statistics have been compiled by the author from the many statutes creating the offices. Obviously the citations are too numerous to list.

missioner, has likewise been relieved of its power of appointment in favor of the governor.⁸⁷

In the first part of the general appointment clauses of the constitution, quoted above, the governor is restricted in making his appointments by the requirement of senatorial confirmation; but the clause goes on to state, "unless a different mode of appointment be prescribed by the law creating the office." In the early years of the operation of the present constitution, it was the policy of the legislature to require that all appointments be subject to confirmation. In recent years, however, it has largely abandoned that policy and has permitted the governor to make many appointments *alone* and without confirmation by the Senate or any other body.⁸⁸ The practice of allowing non-confirmatory appointments by the governor began with the creation of the State Roads Commission in 1908. The act setting up the commission⁸⁹ provided for the appointment of three members by the governor *without confirmation by the Senate*, and the designation by the governor of two members from the Maryland Geological and Economic Survey, who, together with the governor, should constitute the commission. This act was amended in 1918, providing for a State Roads Commission of only three members to be appointed by the governor without confirmation by the Senate.⁹⁰ This practice has been continued and has become a settled policy of the General Assembly in creating new offices or in amending the provisions of the statutes relating to the older ones.⁹¹

⁸⁷ Acts of 1922, ch. 29.

⁸⁸ Out of the sixty-six appointments in which the governor has part, only eighteen are made by him with the advice and consent of the Senate.

⁸⁹ Acts of 1908, ch. 141, sec. 32A.

⁹⁰ Acts of 1918, ch. 224; art. 91, sec. 33 of the Annotated Code of 1924. It is settled that the legislature has power to confer upon the governor the power to appoint to statutory offices without consent of the Senate. *Ash v. McVey*, 85 Md. 119, 126; *Scholle v. State*, 90 Md. 729; and, *Purnell v. Shriver*, 125 Md. 266.

⁹¹ Some of the most important officers and commissions which the governor alone appoints are: State Auditor, Bank Commissioner, Insurance Commissioner, Conservation Commissioner, Commissioner of State Employment and Registration, Commissioner of

Besides senatorial confirmation, another limitation upon the governor's power of appointment is the overlapping of terms, especially in the boards and the commissions. This undoubtedly lessens the governor's responsibility because he cannot fairly be held answerable for the acts of officials whom he does not appoint.⁹² This view is sound as a general principle, certainly as applied to purely administrative work. Nevertheless, the Maryland legislature has made exceptions to the principle and has created quasi-judicial and policy-making boards with overlapping terms of the members because, it is held, this system assures continuity of policy. The Reorganization Commission in 1921 stated that: "In some fields of work, at least, such boards are desirable, and we do not think that the Governor's responsibility is materially lessened by them."⁹³ On the whole, however, the number of these boards has tended to decrease until barely a dozen boards and commissions continue under that system.⁹⁴

With the object of preventing political considerations from entering into the appointment of boards requiring technical or professional qualifications, it has been provided that the governor shall make the appointments from lists of names submitted to him by the related professional associations of the state.⁹⁵ This limitation, however, cannot be carried so far as to encroach upon the proper appointing power of the governor. In an opinion of the Attorney-General, it is stated

Mental Hygiene, Purchasing Agent, Commissioner of Labor and Statistics, State Industrial Accident Commission, State Tax Commission, Public Service Commission, State Department of Education, State Roads Commission, Board of State Aid and Charities, and Maryland Racing Commission. Altogether these non-confirmatory appointments number about forty or fifty per cent. of the total number of the state administrative agencies.

⁹² Mathews, *Principles of American State Administration*, pp. 87-88.

⁹³ Report of the Reorganization Commission, pp. 24-25.

⁹⁴ Chiefly, the Public Service Commission, State Industrial Accident Commission, State Tax Commission, Board of State Aid and Charities, Department of Education, Regents of the University of Maryland, Department of Health, and the Board of Motion Picture Censors.

⁹⁵ There are four such boards in Maryland: Board of Electrical Examiners and Supervisors, State Board of Examiners for Nurses, State Board of Optometry, and the Board of Osteopathic Examiners.

that the governor " . . . may decline to act upon . . . any of the names submitted, in which case it would be the duty of the Association to submit new names."⁹⁶ The appointment to office has not been regarded as a ministerial act; on the contrary, a certain discretionary power is left with the governor even when making appointments from nominations because he is required to appoint *from* nominations submitted, indicating power of choice or selection.⁹⁷ Thus, in actual practice, the duty to appoint from nominations does not act as a serious limitation upon the legitimate power of the governor. In the case of two commissions, however, the appointing authority is not vested in the governor at all, but is in the hands of private outside agencies, such as the Medical and Chirurgical Faculty, which appoints the members of the State Board of Medical Examiners, and the State Homeopathic Medical Society, which appoints the Board of Homeopathic Examiners.⁹⁸

Formerly, the practice of constituting the *ex officio* Board of Public Works as a special appointing agency for the appointment of certain civil officers⁹⁹ operated as a restriction upon the governor's power of appointment, since he, being a member of the Board, was bound to secure the support of at least one other member in making appointments.

⁹⁶ V Opinions of the Attorney-General 507. This opinion is supported by *Keyser v. Upshur*, 92 Md. 731.

⁹⁷ V Opinions of the Attorney-General 506. "The decisions of the . . . courts, State and Federal, as to the meaning of the word 'appointment' and what constitutes an appointment under the law, are to the effect that the choice of a person to fill an office constitutes the essence of the appointment; that the selection must be the discretionary act of the officer . . . clothed with the power of appointment; that while he . . . might listen to the recommendation or advice of others, yet the selection must finally be his . . . act, which has never been regarded as ministerial." *Corpus Juris*, IV, 1404 (note).

⁹⁸ The provision of the Constitution, art. II, sec. 10, does not operate to prevent the legislative power from providing that appointment to an office created by statute shall be made by a private corporation. *Scholle v. State*, 90 Md. 729. See also, *Davis v. State*, 7 Md. 161.

⁹⁹ State Auditor, Insurance Commissioner, and Bank Commissioner. The Board of Public Works is provided for in the Constitution, art. XII.

However, this practice of putting the appointing power of the governor in commission has been abandoned, for the most part, in Maryland, and the governor has thereby gained additional patronage.¹⁰⁰ Nevertheless, the practice has been continued of restricting the executive's power to appoint the State Board of Examiners of Public Accountants, the Board of Directors of the Workshop of the Blind, and the Trustees of Washington Cemetery by compelling him to act in conjunction with the Johns Hopkins University and the Maryland School for the Blind. So it seems that the governor's power of appointment has not altogether been taken out of commission.¹⁰¹

The secondary power of appointment which the governor possesses under the Constitution, as noted above, is concerned with his power to fill vacancies.¹⁰² In the first place, the governor is authorized to fill all those vacancies which occur during a recess of the Senate in offices to which he originally appoints by and with the advice and consent of the Senate.¹⁰³ In the second place, he is given the power to fill vacancies which occur during a session in offices to which he and the Senate originally appoint.¹⁰⁴ In the third place, he can fill

¹⁰⁰ The officers named above are now made appointive by the governor alone without confirmation of the Senate. Acts of 1922, ch. 29.

¹⁰¹ The governor makes almost no appointments in the case of six boards which are largely *ex officio*. These are: Board of Public Works, Maryland Public Library Advisory Commission, State Armory Commission, Directors of the Legislative Reference Bureau, Board of Boiler Rules, and Central Purchasing Bureau. Before 1922 there were eleven such commissions and boards. Before the Reorganization Act of 1922, ch. 29, the governor was himself an *ex officio* member of eleven different boards and commissions. This number was cut to nine by the Reorganization Act.

¹⁰² Constitution, art. II, secs. 11, 14.

¹⁰³ *Ibid.*, art. II, sec. 14. With respect to officers whose appointment must be made jointly, it is settled that, the failure of the Senate to act at all upon a nomination, or the rejection of such nomination by the Senate, does not create a vacancy which the governor is authorized to fill; and, that in such case the incumbent holds over until a vacancy does occur or until the governor and Senate jointly appoint. Such officers hold office until their successors are appointed and have qualified. *Smoot v. Somerville*, 59 Md. 84, 91, 94; *Cull v. Wheltle*, 114 Md. 58, 90 ff; and *Purnell v. Shriver*, 125 Md. 266-269.

¹⁰⁴ Constitution, art II, sec. 14.

vacancies in those offices to which he alone originally appoints.¹⁰⁵ Finally, the governor has the power to fill certain vacancies occurring in offices which he does not fill in the first instance.¹⁰⁶

It will be seen from this review that the governor's power of appointment of officers of the administration is quite extensive; but, also, that it is subject to certain limitations in respect both to its scope and to its efficacy in action. Professor Mathews says:¹⁰⁷

Even, however, if these limitations did not exist, the appointing power, in itself, would be found to be an imperfect means of control. If the exercise of the governor's power over administrative officers were completely exhausted in the act of appointment, his appointees, . . . having nothing further either to fear or to gain from him, might assume an attitude of independence calculated to interfere seriously with effective administration.

However, in Maryland, as in many of the other states, the governor is given additional means whereby he is able to control the administrative officers; namely, supervision or direction, and removal from office.

There is no general provision in the Constitution whereby the governor is granted any legal powers of supervision or direction; but, in the statutes creating the various administrative offices, the legislature has been prone to include certain directive powers.¹⁰⁸ For example, it is frequently provided that approval of the governor must be had for the appointment of assistants or deputies to the heads of departments, such as the Board of State Aid and Charities,¹⁰⁹ the Commissioner

¹⁰⁵ The limitation contained in art. II, sec. 11, of the Constitution (declaring that in case of vacancy during recess of the Senate, in any office which the governor has power to fill, he shall nominate a person whose commission shall continue in force not later than the end of the next session of the legislature) does not apply to a statutory office, where the act creating it provides, as authorized by art. II, sec. 10, for appointment thereto, without the concurrence of the Senate. *Ash v. McVey*, 85 Md. 119.

¹⁰⁶ Such as, the Attorney-General, Comptroller, Treasurer, Sheriffs, Judges, etc. See Constitution, art. V, sec. 5; art. VI, sec. 1; art. IV, sec. 44; art. IV, secs. 5, 40.

¹⁰⁷ *Principles of American State Administration*, pp. 94-95.

¹⁰⁸ For the governor's directive power over the chief executive officers, see the above sections of this chapter devoted to them.

¹⁰⁹ An. Code, art. 88A, secs. 4, 5.

of Motor Vehicles,¹¹⁰ the Public Service Commission,¹¹¹ the Conservation Commissioner,¹¹² and the Commissioner of Labor and Statistics.¹¹³ In several cases, the salaries of the assistants are specifically made subject to the governor's approval.¹¹⁴ In fact, the salaries of the extra help in all of the departments, unless especially fixed in the statutes, are dependent upon the governor inasmuch as he may fix the stipends in the budget.¹¹⁵ Then, too, due to the fact that the governor compiles the budget, and has great power over the appropriation for the executive departments, he may determine the annual allowances of the state boards and officers for expenses.¹¹⁶ Some degree of supervision also arises from the provision usually found in the statutes that the officers are required to report to the governor at regular intervals.¹¹⁷ A typical illustration is found in the requirement that the executive officer of the Department of Legislative Reference " . . . shall report in writing annually to the Governor . . . upon the performance during the preceding year of the duties imposed by law."¹¹⁸ The character of the information required in these reports varies in the different laws, but, for the most part, it consists of accounts of moneys received and disbursed, transactions made during the year, and recommendations for needed legislation.¹¹⁹ Such information is often helpful in providing the governor with the necessary data in order that he may be able to determine future administrative policy and to advocate the necessary laws. Added to this, it may be useful in enabling the governor to investi-

¹¹⁰ *Ibid.*, art. 56, secs. 175, 176.

¹¹¹ *Ibid.*, art. 23, sec. 349.

¹¹² *Ibid.*, art. 19A, sec. 11.

¹¹³ *Ibid.*, art. 89, sec. 1.

¹¹⁴ Commissioner of Motor Vehicles, Public Service Commission, Commissioner of Labor and Statistics, and Board of State Aid and Charities.

¹¹⁵ An. Code, art. 64A, sec. 3; art. 91, sec. 27. See ch. vi of this study in that section devoted to a discussion of the budget amendment.

¹¹⁶ For a discussion of the budget, see ch. vi.

¹¹⁷ An. Code, art. 41, secs. 20, 60, 68.

¹¹⁸ *Ibid.*, art. 41, sec. 64.

¹¹⁹ *Ibid.*, art. 41, sec. 68; art. 56, secs. 175-176; art. 19A, sec. 11.

gate the conduct of the various departments and to bring to light any irregularities that may arise.¹²⁰ But what if these official reports are insufficient for the governor's purposes, or if they conceal or gloss over the essential facts which might be necessary in order that the powers of the governor may be carried out, or in order to complete any of his official acts? It is supposed that the chief executive could have recourse to court action through the writ of mandamus;¹²¹ but this action is likely to be slow, and therefore, not very conducive to administrative efficiency.¹²² As one authority has said:

The governor cannot exercise a real control over the state administrative officers through a mere legal power of direction, capable of being enforced only through appeal to the courts. Such control by the governor cannot be fully introduced except by granting to him the power of . . . suspension or removal.¹²³

The power to suspend from office is not granted to the governor of Maryland by the constitution or the laws,¹²⁴ but the power of removal is expressly conferred upon him by the constitution in very decisive terms; namely, "The Governor may . . . remove for incompetency or misconduct, all civil officers who received appointment from the Executive for a term of years."¹²⁵

In the Constitution of 1776, as has been shown, the governor received a considerable power of suspension and removal over certain classes of administrative officers; and, in the Constitution of 1851, this power was continued and extended.¹²⁶ In the Convention of 1851, however, fear was

¹²⁰ Mathews, *Principles of American State Administration*, pp. 96-97.

¹²¹ The courts may compel an executive officer to perform a ministerial act. *Magruder v. Swann*, 25 Md. 173.

¹²² Mathews, *op. cit.*, p. 97.

¹²³ *Ibid.*, p. 155.

¹²⁴ *Cull v. Wheltle*, 114 Md. 58 (1910).

¹²⁵ Constitution of 1867, art. II, sec. 15.

¹²⁶ The power of suspension from office was not continued, except in the case of military officers; namely, "The Governor may suspend or arrest any military officer of the State for disobedience of orders, or other military offense, and may remove him in pursuance of the sentence of a court-martial." Constitution of 1851, art. II, sec. 15; 1864, art. II, sec. 17; and 1867, art. II, sec. 15.

expressed that it might be used for partisan purposes, and thus introduce the spoils system. One member of the Convention declared that he was unwilling to make the tenure of officers dependent upon the whim of the governor, saying:¹²⁷

A power to cut short the political existence of a meritorious officer in the midst of his term for which he was appointed, by the mere *ipse dixit* of a party governor, was a dangerous incentive to maladministration.

Nevertheless, the proponents of the removal power marshalled enough votes in the Convention to pass the removal section in the precise words of the present constitution.¹²⁸ It seemed as if there were many far-sighted observers who firmly believed that the governor's power of removal must be extended if he was to be properly held responsible for the conduct of the administration.¹²⁹

The removal power of the Maryland governor, although not so complete or widespread as that of the President of the United States, is quite extensive and, generally speaking, is not greatly surpassed in any other state of the Union. In recent years, along with the concomitant power of appointment to office, the removal power has been extended and applied to the newer agencies of administration by the various statutes creating the offices.

Under the authorization of the general removal clause of the Constitution, the governor is given power to remove all civil officers appointed by him for a term of years. In construing this clause, the highest court of the state has held that not only may the governor remove all those civil officers appointed by him alone, but also all civil officers appointed by him with the coöperation and approval of the Senate.¹³⁰ In some of the states it has been held that, where the governor makes appointments subject to the ratification of the

¹²⁷ Debates I, 471.

¹²⁸ Constitution of 1851, art. II, sec. 15. The Constitution of 1864 modified and restricted the removal power by the words: " . . . for a term not exceeding two years." Art. II, sec. 17.

¹²⁹ Debates, I, pp. 471 ff.

¹³⁰ Harman v. Harwood, 58 Md. 1.

Senate, he can remove only with the concurrence of that body.¹³¹ Furthermore, in some other states the governor is not permitted to remove any official without the consent of the upper house whether appointed by him alone or by and with the advice and consent of the Senate.¹³²

In none of the states has the governor been given the power in all cases to remove at pleasure and Maryland does not differ from the general practice. In fact, there are less than a half dozen officers who are subject to summary removal.¹³³ The constitutional provision, quoted above, stipulates that the governor may remove for incompetency or misconduct, and almost all of the statutes of the legislature lay down the same, or similar, restrictions. A typical provision for removal is quoted from the law establishing one of the administrative offices, as follows:¹³⁴

The Governor may remove the Parole Commissioner for inefficiency, neglect of duty or misconduct in office, giving to him a copy of the charges preferred against him, and the opportunity of being publicly heard in person or by counsel in his own defense, on not less than ten days' notice. In case of removal, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such commissioner and his finding thereon, together with a complete record of the proceeding.

These restrictions, it is felt, are wise since they prohibit any governor who may be inclined to do so from exercising the removal power in an arbitrary manner or for partisan purposes. Even so, the causes for removal are liberal enough so that the governor may legitimately remove any officer who may be impairing the efficiency of the administration. As Professor Mathews says:¹³⁵

The principal object . . . appears to be to bring the light of publicity to bear upon the reasons which the governor assigns for his actions, to place him under a greater sense of responsibility, and to enable the people to judge as to the sufficiency of such reasons.

¹³¹ Finley and Sanderson, *The American Executive and Executive Methods*, p. 94.

¹³² Constitution of Florida, art. IV, sec. 15; *State v. Johnson*, 30 Fla. 499 (1892).

¹³³ See An. Code, art. 23, sec. 349; art. 41, sec. 59; and, art. 48, sec. 9.

¹³⁴ *Ibid.*, art. 41, sec. 47.

¹³⁵ *Principles of American State Administration*, p. 110.

It is to be noted that the method provided for removal appears to resemble a judicial procedure; however, in conducting such a hearing, and, as a result, removing from office such official against whom charges have been brought, the chief executive performs not a judicial, but an *executive act as the result of a quasi-judicial proceeding*. Were it not so, the governor would be prevented from performing the act as in violation of the principle of the separation of powers.¹³⁶ As it is, the governor is the sole judge of the sufficiency of the charges and his action is not subject to review by the courts.¹³⁷ It is to be regretted that, during the removal proceedings, the officer so charged may not be suspended from office; but the legislature has never granted the power of suspension, nor have the courts seen fit to regard suspension as incidental to the power of removal.¹³⁸

In conclusion, then, the governor of Maryland has been granted quite sweeping powers of removal over the various officers of the administration, including those whom he appoints originally and those whom he does not appoint in the first instance. As has been mentioned in preceding pages, the governor has the constitutional power to remove, under certain circumstances, the Comptroller and the Treasurer, two officers who are not appointed by him, but are elected by the people and by the legislature respectively. Nevertheless, the popularly-elected Attorney-General may not be removed by him, nor may he remove certain other officers engaged in the execution and enforcement of state law. Some of these he appoints in the first instance, such as the County Boards of Education¹³⁹ and the Justices of the Peace;¹⁴⁰ and some are not appointed by him but are elected locally, such as the

¹³⁶ Ibid., p. 108.

¹³⁷ "When the power of removal from office is placed in the discretion of any person or body of persons, or depends upon the exercise of their personal judgment as to whether the cause for removal be sufficient, mandamus will not lie to revise their action." *State v. Register*, 59 Md. 283.

¹³⁸ *Cull v. Whelple*, 114 Md. 58.

¹³⁹ *School Commissioners of Worcester Co. v. Goldsborough*, 70 Md. 193.

¹⁴⁰ Constitution, art. IV, sec. 42.

State's Attorneys¹⁴¹ and the Sheriffs.¹⁴² The governor has been given comparatively little power of removing local officials, chiefly because of the general feeling that this would be a violation of the principle of home-rule. Professor Mathews, speaking generally, says:

Local officers are more frequently elective than appointive, and it is thought by many persons that, since they are closer to the people than are state officers, the people can the better judge of their conduct in office without state interference.¹⁴³

Nevertheless, he also states:¹⁴⁴

Since the states depend, to a large extent, for the enforcement of their laws upon local officers, the activity or inaction of such officers in enforcing the law is a matter of direct concern to the state, and, in case of neglect of duty on their part, the governor should have the power to remove them.

Undoubtedly, quite a bit of the sentiment expressed in Professor Mathews' statements is applicable to Maryland, in that there is plenty of room for improvement in the administrative machinery, but the disintegration of administrative control is an heritage from the past and is not likely to be abolished easily, although in late years there has been, and still is, a strong tendency in that direction. The governor has been granted highly increased powers of appointment, supervision or direction, and removal of officers, especially of those who are denominated *civil* as distinguished from those primarily *judicial*, and those officers who are denominated *state* as distinguished from those primarily *local*.

ADMINISTRATIVE REORGANIZATION

Improvement in the machinery of the Maryland government has been brought about within the last fifteen years or more by the incorporation into the Constitution and the laws of five new institutions; namely, the executive budget, departmental or administrative reorganization, the merit system,

¹⁴¹ Ibid., art. V, secs. 7-12.

¹⁴² Ibid., art. IV, sec. 44.

¹⁴³ Principles of American State Administration, p. 106.

¹⁴⁴ Ibid., p. 105.

central purchasing, and fewer elections.¹⁴⁵ All of these innovations have important bearing upon the chief executive, but the greatest emphasis in this study will be placed upon the executive budget and departmental reorganization, since these two have affected the powers and duties of the governor more than any of the others. As the former institution greatly affects the relation of the governor to the legislature, a full discussion of it is left for the following chapter.

In the early days of Maryland, as indeed of the other states, the activities of the government were relatively few. The state was largely concerned with the maintenance of order and interfered but little with the everyday life of the individual. What little administrative work there was to be done, was performed by a few officers attached to the executive department. However, conditions gradually changed. New conditions arose and the administrative activity of the state broadened little by little until the affairs with which it is concerned today bear but slight resemblance to its old horizons. Ably stated by Charles A. Beard:¹⁴⁶

In the history of state administration . . . we find reflected the material changes of American life and the growth of American spirit. If we take the statute books of any state showing the creation of one office after another, we can trace the effect of rail-ways, industries, mining, agriculture, corporations, highways, and automobiles upon law and its administration. There we find also the development of natural science in its manifold applications to the protection of life and health and the encouragement of industry and agriculture. There, written large, is revealed the humane spirit of America—the passion for universal education, the solicitude for the sick, dependent, and unfortunate, the anxiety about the safety and health of those who labor in dangerous places, and the eagerness to stamp out, as far as it can be done by community action, undeserved poverty.

Conditions such as those described in the quotation above were, of course, paralleled in Maryland; and similar provisions were made for them in the statutes. The public demanded more and more regulation of our economic and material life and the state, in response to this demand, provided

¹⁴⁵ See Kent, "Maryland—A Perfect State?" *World's Work*, LVI, pp. 19-24, for an eulogistic account.

¹⁴⁶ *American Government and Politics*, (1930), p. 575.

the ways and means. The policy has been, whenever a new work was to be done, to provide a new instrumentality for doing it. Assuming from decade to decade new functions, the state created special offices, boards, commissions, and other agencies to discharge them. For the most part, these were independent agencies, each with its own responsibilities and statutory sphere of operation.

All of this resulted in a period of accomplishment but inevitably the new institutions were not grouped together in appropriate departments. For the most part, the administrative services were independent of each other and were simply added on from time to time to the existing executive structure. Coördination was impossible under such a system, or lack of system. As stated by Judge Charles A. Burke:¹⁴⁷

It was leading, first of all, to a top-heavy government, a government of too many boards and commissions, each regarding itself too much as independent of the others, too much as if it were the chief activity in which the State was engaged. Nominally the Governor was over them all. Held responsible for them he was, but he was not given adequate means to fulfill that responsibility; for the boards were fast becoming so many that supervision over them all was a physical impossibility.

The multiplication of the administrative and executive agencies not only tended to result in duplication of effort and to involve the state in useless expense, but also made it difficult for any one to comprehend the existing structure. The governor was nominally responsible for the efficient conduct of the different agencies, but his authority was weakened by the lack of unified control, overlapping terms, little provision for supervision, and lack of coördination between related agencies. As in many of the other states, the executive

¹⁴⁷ Judge Burke was the chairman of the Reorganization Commission and this quotation is taken from his report to the governor, of September 14, 1921, p. 11. The report is compiled in a pamphlet entitled: "Plan for the Reorganization of the Administrative Departments of the State Government of Maryland," hereinafter referred to as "Burke's Report." It might be added that, through the generosity of Mr. Edward Burke, son of the late Judge Burke, the writer has had access to the private papers of Judge Burke relating to the work of the commission from which a wealth of material has been obtained for use in the following pages.

branch of the government was disintegrated and decentralized. "It was the realization of such things as these," writes Judge Burke, "which . . . led Maryland to put into effect . . . very extensive departmental mergers . . . and to adopt the Budget System, and, later, the Merit System and the State Purchasing Department." He continues:¹⁴⁸

The natural, logical thing now . . . is to pause and view in its entirety our governmental machinery, and to re-cast the structure, coördinating the several agencies, preserving every strong feature and cutting out every weak one, so that we may have a practical, working, well-balanced whole, capable of operating better than the present one, and at less cost.

Early in his first term, Governor Albert C. Ritchie, mindful of its urgency, took the question of administrative reorganization under consideration. From his experience as Attorney-General,¹⁴⁹ and governor, and from the reports and recommendations sent to him by competent authorities, he became convinced that the administration should be simplified and improved. In 1920, the legislature appropriated a sum of money to enable the governor to make a survey and he engaged the firm of Griffenhagen and Associates of Chicago to examine the existing structure. Their report was submitted to him in April, 1921.¹⁵⁰ Although the work of this firm was disregarded to some extent, it served as a foundation for the plan adopted.

In this same year the governor appointed the Maryland State Reorganization Commission composed of one hundred and eight representative men and women from all parts of the state, with Judge Charles A. Burke as chairman, to make a survey of the administrative departments, and to suggest such changes as would promote efficiency and economy in the state government.¹⁵¹ An executive committee of twenty-four

¹⁴⁸ *Ibid.*, pp. 18-19.

¹⁴⁹ While Attorney-General, Mr. Ritchie reorganized the law department of the state in an integrated fashion with an annual saving of one-third of the former operation cost. I *Opinions of the Attorney-General*, p. 3.

¹⁵⁰ Report on the Organization and Administration of the State Government, April 15, 1921 (pamphlet).

¹⁵¹ "... the submission of the question to a large body of men and women of the governor's own party was a wise move. It con-

was selected from this group, but the main work fell to a small sub-committee of eight under the chairmanship of Burke which worked in close cooperation with the governor.¹⁵² After a study of the whole subject, the committee decided to formulate its own plan "guided in its work by the light of the experience of our own people, and mindful of the character, the history, the accustomed rights, the political ideals, and needs of the people of Maryland."¹⁵³

After the committee had completed its survey of the state administration it found that there were seventy-seven separate and independent state administrative agencies. Six of these were appointed by the governor alone. Five generally more important officers were appointed by the governor and the Senate. Two, the Comptroller and the Attorney-General, were elected by the people, and one, the Treasurer, was elected by the legislature. The Board of Public Works appointed the Auditor, the Bank Commissioner, and the Insurance Commissioner. The terms of these officers ranged from two to four years; however, the terms of the Commissioner of Motor Vehicles and the State Employment Commissioner were for three and six years respectively. All except two of them were salaried officers; the exceptions being the Measurer of Woodcarts and the Inspector of Hay and Straw, who subsisted on fees.¹⁵⁴

As for the sixty different boards and commissions, they ranged in membership all the way from two to thirty; however, the usual numbers were three and five. The tenure of the members of these bodies varied from two to nine years,

solidated party opinion behind the governor and eventually led to the endorsement of his reorganization plan by the state convention of the party. And when after a successful election on the issue the politicians tried to balk, they found the governor immovable with a solid public opinion behind him." N. H. Debel, "Administrative Reorganization in Maryland," *American Political Science Review*, XVI, 644.

¹⁵² Burke's Report, p. 12.

¹⁵³ *Ibid.*, p. 13.

¹⁵⁴ These and the following statistics were compiled from Burke's Report, the report of Griffenhagen and Associates, *Annotated Code of Maryland*, and, "Administrative Reorganization in Maryland," by N. H. Debel, in *Amer. Pol. Sc. Rev.*, XVI, pp. 640-647.

while thirteen boards had an indefinite term. Overlapping of terms was a common occurrence, this being particularly true in the case of the longer terms. Thirty-three boards were non-salaried, and the members of sixteen received a *per diem* for their work.

A great variety was found in the manner of appointment to these commissions and boards. Seven were made up entirely of *ex officio* members, and in the case of thirteen others the membership was partly *ex officio*. The governor was a member of eleven boards and commissions and alone appointed the members of twenty-four. Ten others were appointed by the governor and Senate jointly. In four cases, the governor appointed from nominations made by related professional societies. Finally, in three cases, the appointments were made entirely by private organizations.¹⁵⁵

It was seen by the committee that little attempt had been made to group together similar or related services. For instance, the Commissioners of Fisheries, Board of Shellfish Commissioners, and the Commander of the State Fishery Force were wholly separated and unrelated. In the same situation were the eighteen boards for examining and licensing trades, vocations, and professions. Then, again, there were ten separate agencies for the regulation of private business. Several authorized state agencies were practically nonexistent, such as the Weigher of Tomatoes, Inspector of Hay and Straw, and the State Agriculture Lime Board. In many cases the different boards were not compelled to make any reports, or to maintain regular offices, employees, and records.

Very clearly, it appeared that the great need was central control. Although, as has been mentioned in preceding pages, the removal power of the governor was quite extensive, it was almost impossible to maintain any effective control. He was hindered to the utmost degree by the maze of officers, boards, and commissions, almost all of them independent and respon-

¹⁵⁵ For a detailed account of the administrative system prior to reorganization, see J. L. Donaldson, Johns Hopkins Studies in Historical and Political Science, XXXIV, No. 4 (1916).

sible to no superior authority. He had no specific facilities for keeping informed and advised as to exactly how the different agencies were functioning. Besides the lack of the means of effective control, the useless multiplication of unrelated agencies was costing the state a great amount of money and the expense of the government was mounting higher and higher.¹⁵⁶ Therefore, it became the aim of the Reorganization Commission to arrange the state administration in a logical system in order to bring about central control; and, at the same time, to promote economy in the conduct of the business of the state.¹⁵⁷

The commission started to work immediately after its appointment, determined its working basis, received helpful advice and criticism from many sources, and labored assiduously throughout the summer of 1921.¹⁵⁸ On September 14, 1921, the plan of the sub-committee was adopted unanimously by the whole commission and subsequently handed to the governor.¹⁵⁹ This was five days before the Democratic Convention of that year. The reorganization plan was formally adopted at that convention and became the leading plank of the party platform.¹⁶⁰ Just before the next session of the General Assembly, the governor, with the aid of a few able lawyers, drafted the plan in the form of a bill. It was introduced in the first days of the legislative session; and, after the usual study and after encountering some opposition from the "machine," was finally adopted. The plan passed the Senate on February twentieth and the House under suspension of the rules on the following day.¹⁶¹

As finally passed, and with few changes from the reorganization commission's recommendations, the state executive

¹⁵⁶ See, Griffenhagen Report, pp. 7-16.

¹⁵⁷ Burke's Report, p. 13.

¹⁵⁸ Burke's collection of newspaper clippings taken from the Sun and the Baltimore American, June 22 to September 15, 1921.

¹⁵⁹ Evening Sun, September 14, 1921; Morning Sun, September 15, 1921.

¹⁶⁰ The Governor's Message to the Legislature, January 4, 1922.

¹⁶¹ Nebel, op. cit., pp. 644-645. Acts of 1922, ch. 29; An. Code, art. 41.

and administrative agencies were consolidated into nineteen departments. The whole business of the state was simplified. Some boards and commissions were replaced by single commissioners. Many agencies which were no longer needed were abolished. Related functions were consolidated. In several instances, the governor was relieved of his duty to serve as an *ex officio* member of various commissions. The Board of Public Works ceased to be an agency of appointment. Greater facilities were instituted for central control and supervision. Finally, and quite important, the plan as adopted meant a saving in the cost of government of more than one hundred thousand dollars a year.¹⁶²

The nineteen administrative departments are now composed as follows: ¹⁶³

- (1) The Executive Department, headed by the governor, and under him, the Secretary of State, one Parole Commissioner (the board being abolished), the Commissioner of the Land Office, the Superintendent of Public Buildings, the Department of Legislative Reference, and the Commissioners for Uniform State Laws.
- (2) The Finance Department, composed of three divisions: (a) Department of Financial Review and Control, headed by the State Comptroller, and embracing the agencies for assessment, collection, audit, purchase, and financial regulation; that is, the State Auditor, Bank Commissioner, Insurance Commissioner, State Tax Commission, and Central Purchasing Bureau. (b) Department of Deposit and Disbursement, headed by the State Treasurer. (c) Board of Public Works, consisting of the governor, the Comptroller, and the Treasurer.
- (3) The Department of Law, headed by the Attorney-General. The duties of the General Counsel of the Public Service Commission are transferred to this department, one Assistant Attorney-General and the Special Tax Attorney are abolished, and the people's counsel for the Public Service Commission is appointed by the governor.
- (4) The Department of Education, headed by the State Board of Education, taking over the public library work and supervising, through the State Superintendent of Schools, the Maryland School for the Deaf, the Maryland Training School for Boys, and the Maryland Training School for Girls.
- (5) The University of Maryland and the State Board of Agriculture, directing the state's agriculture and higher educational work as formerly, now have charge of the forestry work,

¹⁶² Baltimore American, July 30, 1921.

¹⁶³ Acts of 1922, ch. 29; An. Code, art. 41.

the State Geological and Economic Survey, and the State Weather Service.

- (6) The Department of Militia, headed by the Adjutant-General.
- (7) The Department of Welfare, comprising the penal institutions, the hospitals for the insane and mental hygiene work. It is headed by the Director of Welfare, who acts as chairman of the Board of Welfare. This board manages the penal institutions. The hospitals for the insane continue under the management of their boards, but the Director of Welfare has supervision over them. The Lunacy Commission is abolished, and its work transferred to a Commissioner of Mental Hygiene, who, aided by an advisory board, is the adviser of the Director of Welfare in his hospital for the insane duties, and in addition directs the state's mental hygiene cases.
- (8) The Department of Charities, headed by the Board of State Aid and Charities as formerly.
- (9) The Department of Health, headed by the State Board of Health, the chairman, however, instead of the secretary being the chief executive officer, and known as the Director of Health. He is appointed by the governor on the nomination of the Board.
- (10) The Department of Public Works, headed by the State Roads Commission, one member of which is appointed by the governor to be director of the department. This department has charge of highway construction and maintenance and of all general construction work of the state.
- (11) The Commissioner of Motor Vehicles as formerly established.
- (12) The Conservation Department, headed by a Conservation Commissioner (the board being abolished), and taking over all the duties of the Commissioners of Fisheries, Board of Shellfish Commissioners, Commander of the State Fishery Force, and the State Game Warden.
- (13) Department of Public Utilities, consisting of the Public Service Commission.
- (14) The State Industrial Accident Commission, as formerly established.
- (15) The Commissioner of Labor and Statistics, the former board being abolished.
- (16) The Department of State Employment and Registration, headed by a commissioner, having charge of the merit system, and taking over the work of professional and vocational examining and licensing.
- (17) The Inspector of Tobacco, as formerly.
- (18) The Maryland State Board of Censors, as formerly.
- (19) The Maryland Racing Commission, as formerly.

In addition to the departmental arrangement of the state's administrative agencies, in order to promote coordination and effective supervision, the law established an Advisory Council of thirteen officials to meet with the governor from

time to time for the consideration of general state policies, finances, and departmental and institutional work. This council is made up of the following: the Comptroller, the Treasurer, the Attorney-General, the Chairman of the State Board of Education, the President of the Board of Agriculture, the Director of Welfare, the Director of Charities, the Director of Health, the Director of Public Works, the Commissioner of Motor Vehicles, the Police Commissioner of Baltimore City, the Conservation Commissioner, and the Commissioner of State Employment and Registration.

Although the reorganization law has not been a panacea for all administrative ills, it has done much toward clarifying the administration as a whole, making it more economical, and increasing the control and supervision of the governor. The Attorney-General, the Comptroller, and the Treasurer are still elected; the appointing power is still exercised in a variety of ways, although the governor appoints to a greater number of offices without confirmation; the governor is still an *ex officio* member of several boards and commissions; overlapping terms are continued in certain agencies; and there are still about the same number of *ex officio* boards and commissions. When compared to that of the experts, the new system is not wholly integrated; but greater coordination has been secured. The governor's increased power and control arise from better facilities for supervision, the orderly arrangement of the various agencies, and the existence of a sort of "cabinet" to act in an advisory and informative capacity. According to Governor Ritchie:¹⁶⁴

The outstanding thing about the Reorganization Act is that it is essentially a Maryland Act, adapted to Maryland needs and Maryland conditions. We did not adopt the plan of any other State, however admirably it might suit here. We adopted the plan which we thought would best suit Maryland.

At any rate, its adoption was a step in the right direction; the governor, himself an able student of state administration,

¹⁶⁴ Address to the Editors of the Maryland Press on the Work and Plans of the State Government, at Annapolis, February 10, 1923, p. 4 (pamphlet).

is satisfied with it; it gave a set-back to the "invisible" government by clarifying the administrative maze and abolishing certain offices; and, moreover, the administration is functioning more smoothly now than ever before.¹⁶⁵

SPECIAL FUNCTIONS

The governor of Maryland possesses certain other powers and functions, as do the governors in the other states, which are neither of a general administrative nor legislative character and are, therefore, grouped separately under this heading. Among the more important are: the military, external relations, judicial, and certain miscellaneous powers and duties, difficult to classify, which will be set forth below.

By the terms of the constitution, the governor is constituted "... the Commander-in-Chief of the land and naval forces of the State ..." and may, under certain circumstances, call them into service.¹⁶⁶ Although the governor is commander-in-chief of the militia when in the service of the state, he does not necessarily command them in person; in fact, the constitution specifically states that he may not do so without the permission of the legislature.¹⁶⁷ It would seem that, in the absence of any provision of the law or judicial decision to the contrary, and inasmuch as the governor is the only state officer who has the power, he is the sole judge of the necessity for calling out the armed forces and may do so on his own initiative.¹⁶⁸

In controlling the militia, the governor acts through the Adjutant General, an officer who is appointed and may be removed by him.¹⁶⁹ In the exercise of his military authority, the governor has the power, by executive order, to make rules

¹⁶⁵ Kent, "Maryland—A Perfect State?" *World's Work*, LVI, 19-24.

¹⁶⁶ Constitution, art. II, sec. 8; An. Code, art. 65, sec. 6.

¹⁶⁷ Constitution, art. II, sec. 8.

¹⁶⁸ For the practice in Kentucky, see *Franks v. Smith*, 142 Ky. 232 (1911).

¹⁶⁹ Constitution, art. IX, sec. 2; An. Code, art. 65, sec. 9. All officers of the state militia are appointed and commissioned by the governor. An. Code, art. 65, sec. 19.

and regulations for the enlistment, discharge, discipline, organization, training, and equipment of the militia.¹⁷⁰ These orders are all transmitted through the Adjutant General who is responsible to the governor for their faithful execution.¹⁷¹ All of these rules and regulations are, however, subject to the limitations imposed by statute and to the concurrent jurisdiction of Congress.¹⁷²

The purposes for which the militia may be called out by the governor are: insurrection, invasion, tumult, breach of the peace or imminent danger thereof, or to enforce the laws of the state. When the militia is on active service, the commanding officer and his subordinates are invested with all the authority of sheriffs in enforcing the laws of the state, and may cooperate with the civil authorities, or take entire charge of the situation as, in the judgment of the commanding officer, the exigencies of the case may require.¹⁷³ In the last resort, then, the authority of the governor to secure the enforcement of state law depends upon his position as commander-in-chief of the armed forces of the state.

In the matter of external relations, the governor is the official representative of his state in its intercourse with other states of the United States and with the Federal Government. One of the more common functions of the governor with respect to the other states concerns the interstate rendition of fugitives from justice as provided for in the Federal Constitution.¹⁷⁴ The governor is the intermediary through which fugitives are delivered up to the state, or states, demanding them.¹⁷⁵ However, it is well established that there is no power in any court to compel the executive of a state to grant extradition by mandamus or otherwise.¹⁷⁶ Nevertheless,

¹⁷⁰ An. Code, art. 65, sec. 6. The Adjutant is required to make annual detailed statements to the governor of all receipts and expenditures for military purposes. *Ibid.*, sec. 10.

¹⁷¹ *Ibid.*, sec. 10.

¹⁷² Constitution of the United States, art. I, sec. viii, par. 16.

¹⁷³ An. Code, art. 65, sec. 10.

¹⁷⁴ Art. IV, sec. ii, par. 2. An. Code of Maryland, art. 42, sec. 15.

¹⁷⁵ On the governor's power of extradition, see *Ex parte Thaw*, 214 Fed. 423.

¹⁷⁶ *Kentucky v. Dennison*, 24 Howard 66.

the governor is placed under a "moral duty" to cause the arrest of fugitives and to deliver them up to the requesting authority. Ordinarily, the governor will recognize this duty and honor such requisitions made upon him.¹⁷⁷ Further, in connection with the other states, the governor of Maryland is by law expressly empowered to confer with the officials and legislatures of other states in order to enter into reciprocal agreements under which the registration of motor vehicles owned by residents of this state will be recognized by them. Moreover, he is authorized to grant to residents of other States the privilege of using the roads of Maryland.¹⁷⁸

With regard to the federal government, the governor may be called upon in time of war to recruit troops for the army and to perform other functions of a kindred character.¹⁷⁹ Upon receiving the returns of national elections, the governor enumerates and ascertains the number of votes given for each person voted upon and proclaims the results.¹⁸⁰ When vacancies occur in the representation of the state in the federal House of Representatives, the executive is empowered to issue writs of elections to fill such vacancies.¹⁸¹ Also, when vacancies occur in the representation of the state in the United States Senate, he is given the power to issue such writs of election; but the state legislature may empower the governor to make temporary appointments until an election is held.¹⁸² Finally, with respect to land within the limits of the state and upon which a lighthouse has been built, or is to be built, the governor, on the application of the United States, is authorized to convey the title and jurisdiction thereof to the Federal Government.¹⁸³

By the constitution of 1851, the governor was stripped of

¹⁷⁷ V Opinions of the Attorney-General of Maryland, 509.

¹⁷⁸ An. Code, art. 56, sec. 190.

¹⁷⁹ Mathews, Principles of American State Administration, p. 119.

¹⁸⁰ An. Code, art. 41, sec. 27.

¹⁸¹ Constitution of the United States, art. I, sec. ii, par. 4.

¹⁸² Ibid., amendment XVII.

¹⁸³ An. Code, art. 96, sec. 2. But the power to cede land in the state otherwise belongs to the legislature. VII Opinions of the Attorney-General of Maryland, 422.

most of his important prerogatives in relation to the judicial branch of the government, in particular the power of appointing judges and many other judicial officers, and these changes have been continued in the succeeding constitutions.¹⁸⁴ However, the governor has today quite a large share in the administration of justice and his functions in relation to the judiciary are by no means negligible.¹⁸⁵

The governor is empowered by the constitution to grant pardons and reprieves and to remit fines and forfeitures for offenses against the state.¹⁸⁶ Thus, he may virtually veto or amend the actions of the courts in criminal cases through the exercise of this power. Like the President of the United States, the governor has the power to pardon without limitation as to time; that is, any time after the offense has been committed, whether before or after conviction.¹⁸⁷ The governor is under no legal compulsion to grant pardons to persons convicted of a crime, because the granting of a pardon is an executive function which rests entirely within his discretion.¹⁸⁸ The chief executive may issue pardons in all cases except impeachment,¹⁸⁹ but there are two restrictions imposed upon his power by the constitution which are of sufficient importance to be mentioned. In the first place, before granting a pardon or *nolle prosequi*, he must give notice in one or more newspapers of the application made for it with the date upon which his decision will be given, and the legislature may require that he give the reasons for his decision.¹⁹⁰ In the second place, he is not permitted to remit the principal or interest of any debt due to the state, except in cases of fines and forfeitures.¹⁹¹

Besides having the power to pardon persons convicted of

¹⁸⁴ See ch. iii of this study.

¹⁸⁵ Reiblich, *Judicial Administration in Maryland*, ch. vi.

¹⁸⁶ Constitution, art. II, sec. 20.

¹⁸⁷ *Ibid.*

¹⁸⁸ *Lowe v. State*, 111 Md. 1.

¹⁸⁹ Constitution, art. II, sec. 20.

¹⁹⁰ *Ibid.*, art. II, sec. 20. Without having been required by the legislature, the present governor (Ritchie) publishes in the newspapers the reasons for his decisions on pardon applications.

¹⁹¹ Constitution, art. II, sec. 20.

crime for the whole of their sentences, the governor has also the power to grant conditional pardons.¹⁹² He may commute sentence of death into confinement or banishment for such period as he may deem expedient, or he may commute the sentence of confinement in the state penitentiary for a like or less period in the Maryland House of Correction.¹⁹³ He may pardon any person, or he may remit part of the sentence on such conditions as he may prescribe without such remission operating as a full pardon.¹⁹⁴ It is settled that the governor is the sole judge of whether or not the conditions of conditional pardon have been breached and such judgment is not reviewable by a court of the state.¹⁹⁵

As the execution of the powers mentioned above entails considerable work, the governor is given the power to appoint an assistant to aid him. Under the former practice, he was aided by an Advisory Board of Parole of three persons appointed by him with the advice and consent of the Senate;¹⁹⁶ however, by an act of 1922, the functions of the Board were put in the hands of a single Parole Commissioner appointed by the governor and Senate and removable by the governor alone for cause.¹⁹⁷ It is the duty of the Commissioner to investigate all applications for pardon and parole and report the result to the governor. He must take under his supervision for such time as the governor may direct any persons who have been conditionally pardoned or paroled by the governor and report to him all violations of any parole. He may appoint and remove at pleasure not more than four parole officers to assist him in this work. In carrying on his investigations, the Commissioner has the power to summon witnesses whenever necessary and may fine for non-compliance. Finally, he may make all rules and regulations not inconsistent with existing laws for the effectual carrying out of his

¹⁹² An. Code, art. 41, secs. 51-55.

¹⁹³ *Ibid.*, sec. 51.

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*, sec. 52.

¹⁹⁶ Acts of 1900, ch. 500.

¹⁹⁷ Acts of 1922, ch. 29; An. Code, art. 41, sec. 47.

duties.¹⁹⁸ Professor Reiblich says: "The supervision of this work by a parole commissioner gives a specific way of controlling it without relieving the governor of the ultimate responsibility therefor, and it seems to give satisfactory results."¹⁹⁹

In the appointment and removal of judges and other court officers, the governor formerly had great powers; however, his function now in those respects does not extend much further than the appointment to vacancies, designation of the presiding officers of several courts, and non-discretionary removal.

The governor has the power under the constitution to appoint all Justices of the Peace in the several counties of the state by and with the advice and consent of the Senate; however, these justices are not removable by him but are subject to removal by the judges having criminal jurisdiction in the several counties on conviction in a court of law. Whenever vacancies occur in the office of Justice of the Peace, he may fill them with suitable persons for the residue of the term,²⁰⁰ and such appointments must be made by the governor alone and not by the governor and the Senate.²⁰¹ The governor alone may also appoint Sheriffs to fill vacancies whose tenure continues until the next election.²⁰²

In case of death, resignation, removal, or disqualification by reason of age or otherwise of any Judge, the governor is authorized to fill such vacancy and the person selected by him holds office until the next general election. Also, upon the expiration of the term of any Judge, the governor may fill the vacancy so caused by any person he may appoint who holds office until the election and qualification of a successor.²⁰³ The governor has no power to remove Judges at

¹⁹⁸ Ibid., secs. 49-55.

¹⁹⁹ Judicial Administration in Maryland, p. 133.

²⁰⁰ Constitution, art. IV, secs. 42, 43.

²⁰¹ Cantwell v. Owens, 14 Md. 225.

²⁰² An. Code, art. 87, sec. 4.

²⁰³ Constitution, art. IV, secs. 5, 40. *Magruder v. Swann*, 25 Md. 215; *Ijams v. Duvall*, 85 Md. 261; and, *Wells v. Munroe*, 86 Md. 448.

his own discretion, but he may remove them on conviction in a court of law, of incompetency, wilful neglect of duty, misbehavior, or any other crime, or on impeachment; or, on address of the General Assembly after they have had opportunity of making defense.²⁰⁴ In regard to the Chief Justices of several of the state courts, the governor is empowered to designate, by and with the advice and consent of the Senate, the Chief Justice of the Court of Appeals;²⁰⁵ and in addition, may designate the chief judge of the Orphans' Court, but in such case he acts alone without the concurrence of the senate.²⁰⁶

One of the most important of the governor's powers in relation to the Judiciary is his power to appoint the Police Commissioner for Baltimore City. Formerly, the police power of Baltimore was exercised by a board of four commissioners appointed for a term of four years by joint action of the two houses of the legislature.²⁰⁷ In 1900, the board was made up of three commissioners appointed by the governor and Senate for a term of two years. Before 1900, these officers were removable by the legislature, but, after that date, they could be removed by the governor for official misconduct or incompetency, in the manner provided by law in the case of other civil officers.²⁰⁸ At the present time, however, the police department of Baltimore is headed by a single Commissioner, having all the power of the former board, appointed by the governor alone and removable by him for cause.²⁰⁹ As

²⁰⁴ Constitution, art. IV, sec. 4. See *Warfield v. Vandiver*, 101 Md. 111.

²⁰⁵ *Ibid.*, sec. 14; An. Code, art. 93, sec. 240.

²⁰⁶ Acts of 1860, ch. 7, sec. 3.

²⁰⁷ Acts of 1900, ch. 15. On January 3, 1900, in his message to the legislature, Governor Lloyd Lowndes urged the appointment of the Police Commissioners of Baltimore City by the governor with consent of the Senate. Maryland Public Documents, 1900, p. 11. The bill bringing this about was passed in the administration of Governor John Walter Smith. *Ibid.*, pp. 603-619. In 1920, a majority of the Baltimore people voted in favor of keeping the appointing power in the governor's hands.

²⁰⁸ Acts of 1900, ch. 15.

²⁰⁹ Acts of 1920, ch. 559. The governor also has the authority to appoint the Commissioner of Motor Vehicles who has the power to appoint the state police for enforcement of the traffic rules. An. Code, art. 56, secs. 175-176.

a result of this important power, the governor is able to secure great control over the execution of the laws. To quote Professor Reiblich again:

This is probably the most efficient form of police administration known to American cities since it provides a centralized control and responsibility in one authority as well as recognizes the governor's position as chief of the law enforcing agencies of the state by empowering him to appoint that authority.²¹⁰

Finally, the only other function of any importance which the governor possesses in relation to the judicial branch of the state government is the issuance of death warrants to the Sheriffs in pursuance of death sentences imposed by the courts. In the carrying out of this function, he signs and issues the warrants ordering the Sheriffs to execute the judgments at such times as he may appoint.²¹¹

Among the miscellaneous functions of the chief executive are: to issue warrants of elections to supply any vacancies that may occur in either of the branches of the state legislature during a recess thereof;²¹² to order a new election in case of a tie vote in any election directed by the constitution;²¹³ to arrange the representation in the House of Delegates in accordance with the apportionment provided for in the constitution;²¹⁴ to proclaim the creation of new counties in the state;²¹⁵ to have control and the use of the Great Seal;²¹⁶ and to issue his proclamation for the forfeiture of the charters of corporations for non-payment of taxes.²¹⁷

²¹⁰ Op. cit., p. 127.

²¹¹ An. Code, art. 41, sec. 19. Actually, however, the death sentences are now executed in the penitentiary by the Warden, or one of his deputies, in the *presence* of the Sheriff of the county or city where the felony was indicted. Acts of 1922, ch. 465; An. Code, art. 27, sec. 407.

²¹² Constitution, art. III, sec. 13.

²¹³ Ibid., art. XV, sec. 4.

²¹⁴ Ibid., art. III, sec. 5.

²¹⁵ Ibid., art. XIII, sec. 2.

²¹⁶ An. Code, art. 41, secs. 15, 18.

²¹⁷ Ibid., art. 81, sec. 103.

CHAPTER VI

THE RELATION OF THE GOVERNOR TO THE GENERAL ASSEMBLY

In the evolution of the governor's office, as described in preceding chapters, it has been seen that the governor has become a strong executive and administrative power until today his position might well be called that of administrator-in-chief. While the governor's power as an administrator has grown, his legal powers in relation to the General Assembly have shown a corresponding increase; in fact, the latter preceded the former in point of time. It may truly be said that the governor became a political power long before the time when he could properly be called a "chief executive."

By the Maryland Constitution of 1776, the executive authority of the state was vested in a governor and council appointed by, and subordinate to, the legislature. The governor's term was fixed at one year, but he was eligible for reelection. He possessed no executive powers which he could exercise alone and his powers in relation to the assembly were negligible. It is true that the governor signed all of the bills passed by the legislature, but this was a mere ministerial act which he could not withhold and was not necessary to make them valid as laws. It seemed as if the people remembered the bitter struggles with the colonial governor and were resolved to place the constitutional governor in an inferior position. "A habit of political thought, once definitely acquired, is not easily thrown off, even after the occasion for its existence has disappeared."¹

The governor's dependent position continued until the adoption of an amendment to the constitution in 1837 by which he was made elective by popular vote for a term of three years. Thus, the governor became somewhat independent of the Assembly, at least he was placed upon a plane of equality. The executive's power in legislative matters was not in-

¹ Mathews, *Principles of American State Administration*, p. 32.

creased; but the custom, adopted in 1795, of sending messages to the legislature had some effect in making him a political officer of some importance.

In the years that followed, the legislature gradually lost some of its prestige, due, for the most part, to wild extravagances; and, on the other hand, the governor gained in importance. By the Constitution of 1851, which was the outgrowth of the agitation for legislative reform, the governor's term was extended to four years and he was given the legal power to send messages to the legislature and to call special sessions of that body whenever he deemed it expedient to do so.² From this time on there seemed to be a marked tendency to extend to the governor increasing powers in the legislative process. The absence of the veto, however, weakened to a great extent whatever legal influence he possessed. The Constitution of 1864 changed the governor's legislative position not at all. The proposal of extending the veto power to him was brought up in the Convention but was speedily tabled "as an unnecessary departure from the custom of the past."³

Thus, it was left to the Constitution of 1867 to establish the governor as an important part in the legislative machinery. To be sure, he had already important functions in regard to legislation through his powers to recommend measures and to call extraordinary sessions of the Assembly; but unless the governor possessed a personality powerful enough to cause the adoption of his recommendations, these powers were, for the most part, of no avail in the last instance. The veto was essential in order to give the executive a real initiative in law-making. This power had been granted to the governor in a number of states, but it was not introduced into Maryland until the adoption of the present constitution in 1867. From that time on, the power of the governor became a positive factor in legislative matters. The General Assembly

² Nevertheless, the Know Nothing House of Delegates in 1858 refused to receive the governor's message. E. S. Riley, *History of the General Assembly of Maryland*, p. 364.

³ See ch. iii.

is properly regarded as the chief organ for the enactment of state laws, but the governor became the next most important agency in law-making.

POWERS IN RELATION TO THE LEGISLATURE

The influence or control which the governor exercises over the legislature, or the General Assembly as it is termed in Maryland, may be considered in two categories; namely, power over the organization and sessions of the legislative body, and participation in the actual process of law-making.⁴

ORGANIZATION AND SESSIONS

It is not at all certain that the governor possesses any real control over the organization of the General Assembly, but, at most, it is very slight. In certain contingencies, when a vacancy occurs in either the House of Delegates or the Senate, the governor has the power or duty to issue his warrant of election to fill such vacancy; but his action may take place only when a vacancy really exists, and such vacancy can exist only in case of death, expulsion, or when a member resigns and communicates this fact to the governor. When the legislature is in session, the presiding officer of the house in which a vacancy occurs issues the warrant of election. It is only during a legislative recess and more than ten days before its termination that the governor is empowered to issue his warrant for a special election to fill the vacancy. During such recess, he may act only when death occurs in a legislative office, or when a resignation is voluntarily made; and when this happens more than ten days before the end of the recess and when the Assembly would not meet before the day of the next general election. When every real purpose can be fulfilled by having the special election on the day of the general election, the constitutional provision requires it to be so ordered.⁵

⁴ Mathews, *op. cit.*, pp. 53-54.

⁵ Constitution, art. III, sec. 13. Niles, *Maryland Constitutional Law*, p. 141. "Each House shall be judge of the qualifications and

The governor has no control over the time for the beginning of the regular legislative session,⁶ nor has he any control over the time of adjournment of either a regular or a special session even when there is a disagreement between the two houses.⁷ In Maryland, whenever the governor determines that the seat of government is an unsafe place for the meeting of the legislature because of the presence of an enemy or from any other cause, he may direct that the legislature meet at some other convenient place. From the very words of the provision in the constitution, it is thought that the governor is the sole judge as to when such an emergency arises and that his action is final and may not be impeached.⁸

Decidedly more important is the governor's power to call special or extraordinary sessions of the legislature.⁹ He may call both houses in special session or he may call the Senate alone.¹⁰ It would seem as if a special session could be called for any reason whatsoever which seems sufficient to the governor and no other authority in the government has the power to so act.¹¹ In some states the work of the special session is restricted to matters submitted by the governor, in others, additional topics may be proposed by an extraordinary vote of each house, and one other state permits the legislature by a two-thirds majority to bring up other matters after the governor's recommendations have been disposed of.¹² In Maryland, although the governor may submit any recommendations he wishes at a special session, he has no control over the agenda thereof and the legislature may bring up

elections of its members . . ." Constitution, art. III, sec. 19; *Covington v. Buffet*, 90 Md. 569.

⁶ The time of the meeting of each regular session of the legislature is definitely fixed in the constitution, art. III, sec. 14; art. XVII, sec. 6.

⁷ *Ibid.*, art. III, sec. 25.

⁸ *Ibid.*, art. II, sec. 16; Declaration of Rights, art. XI.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ In West Virginia, a special session may be called only on application of three-fifths of the members of the legislature; in Virginia, two-thirds of the members; in North Carolina, by the governor with the advice of the council. Dodd, *State Government*, p. 167.

¹² *Ibid.*, pp. 167-168.

any additional matter, provided that the session does not continue more than thirty days.¹³ This may be so, but the governor's control of legislation during a special session is quite extensive, inasmuch as there is less opportunity for evading responsibility for the enactment of necessary laws. "The attention both of the legislature and the public is concentrated . . . upon the subjects brought forward by the governor."¹⁴

PARTICIPATION IN LAW-MAKING

Perhaps one of the governor's most significant and important positive influences in legislation is his power to send regular and special messages to the General Assembly.¹⁵ The potentialities of this power can scarcely be overestimated, for it gives the executive the opportunity to bring directly before the eyes of the Assembly measures in which he is especially interested and which are calculated to affect the state as a whole. In his position as the most important state officer, he has a chance to take a broad view of conditions within the state, in contrast with the locally-elected senators and delegates. Of course, it is not mandatory upon the Assembly to enact into law the measures proposed by the governor. It may act upon them or not as it wishes. However, by the weight of his political authority, by the very public character of the measures advocated, and by the responsibility placed upon the Assembly to pass needful laws, the governor often has his proposals accepted and made part of state law. On

¹³ Constitution, art. III, sec. 15. Just before the special session of July 29, 1930, it was rumored about the State that the opposition intended bringing up matters other than those called for in the governor's proclamation; but nothing came of it. The governor's measure was enacted into law and the Assembly adjourned the same day. The Baltimore Post, July 28, 1930. See the Message of the Governor to the Special Session, July 29, 1930.

¹⁴ Mathews, *op. cit.*, p. 57. See also, Patterson, *American Government*, p. 618; Ogg and Ray, *Introduction to American Government*, 1915, p. 691.

¹⁵ The constitutional provision is as follows: "He shall, from time to time, inform the Legislature of the condition of the State, and recommend to their consideration such measures as he may judge necessary and expedient." Art. II, sec. 19.

the other hand, the messages are often invaluable to the legislature inasmuch as they usually inform it of the condition of the state and serve as veritable working programs.

In the first constitution, the governor was given no such power to initiate legislation, and it was not until 1795 that Governor Stone established the custom of making recommendations for needful laws.¹⁶ This was the origin of the power of sending recommendations, but it was not made part of the constitution until the instrument of 1851 was adopted and then continued in the succeeding constitutions.¹⁷

The message of the governor to the Assembly is the first opportunity for him to exert his influence upon legislation. About a month before the regular session, the governor, with the assistance of other persons,¹⁸ starts to prepare his message. He usually includes in it a statement of the general financial condition of the state, a review of the operation of the administrative departments during the preceding year, his opinion as to the lowering or raising of taxes, proposals of loans, recommendations for local and special laws,¹⁹ suggestions for the creation of new administrative agencies, recommendations for laws affecting the executive department, together with a number of reforms and advances.²⁰ The proposals contained in the message are put into the form of regularly drawn-up bills, printed, and made ready for introduc-

¹⁶ The assembly welcomed this custom and it expressed the wish that future governors follow "the laudable example." Ch. iii of this study.

¹⁷ Constitution of 1851, art. II, sec. 18; 1864, art. II, sec. 20.

¹⁸ Chiefly, the Executive Officer of the Department of Legislative Reference and the Attorney-General.

¹⁹ The General Assembly shall not pass local or special laws in any of the following cases, viz.: "For extending the time for the collection of taxes, granting divorces, changing the name of any person, providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities, by executors, administrators, guardians or trustees, giving effect to informal or invalid deeds or wills, refunding money paid into the State Treasury, or releasing persons from their debts or obligations to the State, unless recommended by the Governor or officers of the Treasury Department." Constitution, art. III, sec. 33.

²⁰ See the messages of the governor contained in Maryland Public Documents and Maryland House and Senate Documents.

tion. When the Assembly convenes, the governor's printed message is presented to every member and read at a joint session of both Houses.²¹ At the first opportunity, usually before any other measures are taken up, the governor's bills are introduced, sometimes simultaneously in both Houses, by the leaders of the governor's own party.²² Upon introduction, they are immediately labeled "Administrative Measures," which label follows them throughout their courses.²³ Although all the measures proposed by the governor are not passed by the Assembly, many of them are enacted into law.²⁴ Thus, the practice of sending messages to the legislature began as a custom, was later incorporated into the constitution, and remains today as one of the chief positive instrumentalities by means of which the governor has become a part of the legislative machinery.

THE EXECUTIVE BUDGET

The power over the "purse" for a long time has been regarded as the sole prerogative of the representative body and, subject to the executive veto, the governor has had little control over state finances. However, in a number of American states within recent years, the governor has been given a part in the exercise of this power chiefly through his function in the preparation and passage of the budget. In 1916, Mary-

²¹ Usually the governor in person delivers his message at a joint session of both Houses; but in case the governor does not deliver it in person, the message is presented to each House separately. On the whole, the governor rarely addresses the Assembly orally.

²² See the *Morning Sun*, January 16, 1929. It is interesting to note that many of the governor's bills in the session of 1931 were not introduced in both Houses but merely in one branch.

²³ Green, "A Study of the Legislature of the State of Maryland," *Johns Hopkins Studies in Historical and Political Science*, 1929, p. 99. As a matter of custom, these bills receive priority over any other legislation. See the procedure in Illinois. *Amer. Pol. Sc. Rev.*, VII, 239.

²⁴ The present governor has succeeded during his three terms of office in securing the passage of almost every measure advocated by him. Almost all of the important legislation of a state-wide character passed during the last ten years is the result of measures introduced at the governor's instigation. See Ritchie's Messages to the General Assembly, January 5, 1927 and January 2, 1929.

land was the first state in the Union to adopt the "executive" budget and to incorporate it as an integral part of the constitution.²⁵

In 1908, this state began the good roads movement upon a state-wide plan. In order to build these roads, the state was compelled to increase its bonded indebtedness, thus greatly taxing its extraordinary, as well as ordinary, resources. In the years that followed, many public institutions were erected, costly administrative agencies were created, and several universities were given state-aid. Former Governor Emerson C. Harrington said:²⁶

All of these demands taken together, with the manner of our legislation, when every senator and delegate felt personally obligated to get what he could for his own section . . . and let the others have what they wanted, the crisis was sure to come, and notwithstanding the plain warning given in my report as comptroller . . . to the legislature of 1914, after the legislature adjourned it was found that it had appropriated what to our state was a startling sum, nearly \$2,000,000 more than the revenues available for the running expenses of the state government.

The system of finance legislation in Maryland was no better or worse than that in any other state. It was careless and haphazard and led to laws of a most unscientific type. The various committees of the Assembly scarcely ever had working programs. They did not know the exact amount of expected revenues nor did they know or attempt to calculate the sum total of money appropriated. The general appropriation bills, bulked together and called the "omnibus bill," carrying vast amounts for charitable and beneficent institutions, were made up, for the most part, in the last few days of the sessions, the rules were suspended, and the bills passed. In addition, many "special" appropriation bills were passed in the last few hours; and, with the omnibus bill, were presented to the governor for his approval. Then, too, a system had grown up in the state of making "continuing appropria-

²⁵ Art. III, sec. 52. Acts of 1916, ch. 159, ratified November 7, 1916.

²⁶ Address delivered at the Conference of Governors, Washington, D. C., December 14-16, 1916. Reprinted in *Municipal Research*, December, 1916, p. 46.

tions." Such appropriations were passed, in the first instance, marked "annual," and were automatically continued from year to year, not being subject to passage by subsequent legislatures. According to Harrington:²⁷

Some of these continuing appropriations had been passed and arranged for over 100 years ago, so that with all these continuing appropriations, the General Appropriations or Omnibus Bills would be far short of showing the total expenses of appropriations of the state government.

This system of finance legislation could not go on, for the state was getting further and further into arrears. Various public and private persons advocated financial reform and a budget system. In the campaign of 1915, both parties adopted the budget in their platforms; but the Democratic Convention went one step further and appointed a non-partisan committee of some of the most distinguished men of the state, with Dr. Frank Johnson Goodnow, President of the Johns Hopkins University, as its chairman, to frame a budget bill. This commission began its work immediately and hired an accounting firm to make a financial survey of the state.²⁸ Basing its work on the report of this firm, the commission drew up a budget plan and recommended its passage as an amendment to the constitution, January 28, 1916.²⁹ After a little discussion the budget bill was passed as drawn and recommended by the Goodnow Commission in the form of an executive budget. Dr. Goodnow said that the chief thought in drafting the budget amendment was "to impose upon the Governor the sole responsibility, within the limits of the Constitution and the provisions of existing law, of presenting

²⁷ Op. cit., p. 47. Harrington also states that "... behind the continuing appropriations all the lobbying elements, benefited interests, and forces of obstruction entrenched themselves for defense." *Ibid.*, p. 47.

²⁸ Report to Dr. Frank J. Goodnow of Harvey S. Chase and Company, of Boston, January 17, 1916.

²⁹ Report of the Commission on Economy and Efficiency on a Budget System. Md. Senate Journal, January 28, 1916, pp. 129-134. At the session of this year, the legislature practiced the strictest economy. Continuing appropriations were abolished, running expenses of the Assembly were cut by many thousands of dollars, and no special bill appropriating money was passed.

to the Legislature a complete and comprehensive statement of the needs and resources of the State . . ."³⁰ The amendment was referred to the people at the election of November, 1916 and was ratified by a vote of 77,478 to 37,100.³¹

Within twenty days after the opening of the legislative session,³² the governor is required to submit to the legislature two budgets, one for each of the ensuing fiscal years. Each of these contains a complete plan of proposed expenditures and estimated revenues for its respective fiscal year. Along with each budget a statement must be made showing: (1) the revenues and expenditures for each of the years; (2) the current assets, liabilities, reserves, and surplus or deficit; (3) the debts and funds of the state; (4) an estimate of the state's financial condition at the beginning and end of each fiscal year covered; (5) any explanation the governor desires to make as to the important features of the budgets and any suggestions for the reduction or increase of the state's revenue.

Each budget is divided into two parts; the first part is designated as "Governmental Appropriations" and the second part as "General Appropriations." In the former are included the estimated appropriations: for the three departments of government,³³ to pay and discharge the principal and interest on the public debt, for the salaries payable by the state under the constitution and the laws, for the establish-

³⁰ Ibid., pp. 129-134.

³¹ The Maryland Budget Amendment, a pamphlet issued by the Department of Legislative Reference, p. 6. (The Goodnow Report is also contained in this pamphlet.)

³² Except in the case of a newly elected governor, and then thirty days after his inauguration. However, in any case, the legislature may extend the time limit. Constitution, art. III, sec. 52, sub-sec. B.

³³ The General Assembly certifies its estimates to the governor and the Comptroller certifies the estimates of the judiciary. These estimates must be included in the budget by the governor without revision. With regard to the executive department, the governor has the power to require itemized estimates and other information from all executive and administrative offices. He may hold public hearings on all estimates and may require attendance of representatives of all agencies and institutions applying for funds. In his discretion he may revise all estimates except those for the legislative and judicial departments, and for the public schools. Ibid., sub-sec. D.

ment and maintenance of the public schools,³⁴ and for such other purposes set forth in the constitution. The second part of the budget includes all other estimates of appropriations which the governor wishes to make in pursuance of the objects called for in his regular message or any other objects.

At the time required, the governor delivers the budgets to the presiding officer of each house together with a bill providing for all the proposed appropriations. These bills are then introduced simultaneously in both houses and must be acted upon finally before the Assembly may consider other appropriations.³⁵ Before final action upon the bill, the governor has the power to add amendments or to correct oversights by delivering them to the presiding officer in each house. In addition, the governor and other members of the executive department designated by him have the right, and are duty bound when required by the legislature, to appear before the committee in charge of the bills to make requests and to answer inquiries. In this respect, the procedure is similar to the English system.

When considering the budget bill, the legislature may not amend it so as to affect either the obligations of the state under the constitution,³⁶ or the provision for the establishment and maintenance of the public schools, or the payment of any salaries required by the constitution to be paid by the state. The legislature may amend the bill by reducing or increasing the items relating to the General Assembly, but may only increase the amounts asked for by the Judicial department. In regard to the executive department, it may alter the bill only by striking out or reducing; but it may not decrease the salary of any public officer during his term of office.

There is a provision in the law, that, should the budget bill

³⁴ See Constitution, art. VIII.

³⁵ *Ibid.*, art. III, sec. 52, sub-sec. C. It is technically correct to say that the governor is required to submit two budgets; but, as a matter of fact, all of the appropriations for the two-year period are included in one bill, known as the "Budget Bill."

³⁶ Art. III, sec. 34.

not be finally acted upon within three days before the expiration of the regular session, the governor may, by his proclamation, extend the term; and during this period no other matter but the budget bill may be considered, except as to the expenses arising from such extended session. When the bill finally passes the legislature, it becomes law immediately. The governor may not exercise his power of veto over it; but he does, as a matter of practice, sign it.

After the budget has been passed in its final form, and then only, may the Assembly consider other, or supplementary, appropriation bills. But even with respect to such bills, the legislative body is restricted by the following stipulations: (1) Every such appropriation must be embodied in a separate bill limited to some single work, object, or purpose therein stated; (2) Each Supplementary Appropriation Bill must provide in the bill the revenue necessary to pay the appropriation by a tax, direct or indirect, to be laid and collected as shall be directed in the bill; (3) A majority in each house of the whole number elected is required to pass such a bill and the yeas and nays must be recorded; (4) Each supplementary appropriation bill must be presented to the governor and he may exercise his power of veto over it.³⁷

The power of the governor under the budget law, then, is much more potent as a positive influence in legislation than any other power he possesses. In the first place, upon him is placed the sole responsibility for providing a complete and comprehensive statement of the estimated financial needs of the state balanced by a statement of the expected revenues. Secondly, he has the power of revision over all strictly administrative estimates. The legislature may not raise the items or insert new ones in regard to funds appropriated for the administrative agencies. Under the old system, there was a mad scramble each session by many of the legislators

³⁷ Ibid., sec. 52, sub-sec. C: Supplementary Appropriation Bills. Nothing in the amendment is to be construed as preventing the governor from calling special sessions of the legislature, or as preventing the legislature at such sessions from considering any emergency appropriations. Ibid., sub-sec. D.

to increase the appropriations for the departments or institutions in which they were interested. This was one of the chief causes of the deficits of former years. Thirdly, the budget law makes it almost impossible for the legislature so to change the plans of the governor as to cause over-appropriation.³⁸ Fourthly, the budget bill has priority over all other appropriation bills, which gives the governor's proposals a decided advantage. Finally, the governor and his agents are given the right to be heard with respect to the bill during its consideration by the General Assembly. In this way the light of publicity is to some extent focused upon appropriations, greatly in contrast with the old haphazard and semi-secret method.³⁹

THE VETO POWER

What has gone before is an attempt to show the positive control which the governor may exercise over bills prior to final passage by the legislature. His action, however, does not end there, for his greatest power, the veto, although a negative one in most respects, may be exercised after the bills have reached his hands.

The section of the constitution conferring the power to approve or disapprove all bills⁴⁰ when they have been passed by the General Assembly and sealed with the Great Seal of the state,⁴¹ is as follows:⁴²

³⁸ The budget amendment made it considerably more difficult for the legislature to make provisions for any purposes not included in the budget by requiring it to provide also for the revenue which the accomplishment of its purpose might necessitate.

³⁹ See Goodnow's Report, *op. cit.*, p. 12. Also, Chase, "The Budget Amendment of the Maryland Constitution," *Nat. Munic. Rev.*, VI, 395-398; and Allen, "The Budget Amendment of the Maryland Constitution," *ibid.*, pp. 485-491.

⁴⁰ Constitutional amendments are excluded from this category because they do not become laws when signed by the governor. They must be passed by the legislature and then submitted to the people for ratification, Constitution, art. XIV, secs. 1-2. *Warfield v. Vandiver*, 101 Md. 28, 120.

⁴¹ A bill must be sealed with the Great Seal before any duty of the governor to consider it begins. *Hamilton v. State*, 61 Md. 14, 28; *Johnson v. Lawes*, 129 Md. 527.

⁴² Constitution, art. II, sec. 17. The item veto was conferred by: Acts of 1890, ch. 194, ratified by the people November 3, 1891.

To guard against hasty or partial legislation and encroachments of the Legislative Department, upon the coördinate, Executive and Judicial Departments, every bill which shall have passed the House of Delegates, and the Senate shall, before it becomes a law, be presented to the Governor of the State; if he approves he shall sign it, but if not he shall return it with his objections to the House in which it originated, which House shall enter the objections at large upon its Journal and proceed to reconsider the Bill; if, after such reconsideration, three-fifths of the members elected to that House shall pass the bill, it shall be sent . . . to the other House, by which it shall likewise be reconsidered, and if it pass by three-fifths of the members . . . it shall become a law; but in all cases the votes of both Houses shall be determined by yeas and nays, and the names . . . shall be entered on the Journal of each House . . . If any bill shall not be returned by the Governor within six days (Sundays excepted), after it shall have been presented to him, the same shall be a law . . . as if he signed it, unless the General Assembly shall, by adjournment, prevent its return, in which case it shall not be a law.

The Governor shall have the power to disapprove of any item or items of any Bills making appropriations of money embracing distinct items, and the part or parts of the Bill approved shall be the law, and the item or items . . . disapproved shall be void unless repassed according to the rules . . . prescribed for the passage of other Bills over the Executive veto.

After a bill has been presented⁴³ to the governor, he may do one of three things: he may sign it, he may keep it beyond the six day limit, or he may veto it. If he signs the bill within the limit of time allowed him, in the presence of the presiding officers and chief clerks of the two houses of the Assembly, the approved bill becomes law and is printed and published.⁴⁴ As stated in the constitutional provision, if

For the veto power in general, see Fairlie, "The Veto Power of the State Governor," *Amer. Pol. Sc. Rev.* (1917), XI, 473-493.

⁴³ The leaving of bills with the chief clerk in the governor's office to be examined by the Attorney-General does not amount to a presentation of such bills to the governor. *Johnson v. Lawes*, 129 Md. 523. The bills must be presented to the governor in person. *An. Code*, art. 41, sec. 1. The record kept by the Secretary of State was held to be competent evidence to show at just what time a bill is presented. *Lankford v. Somerset County Commissioners*, 73 Md. 105.

⁴⁴ Constitution, art. III, sec. 30. It would seem that this provision is mandatory and that unless the authentication and signature of the governor are as prescribed, a bill would not become a law. *Niles*, *Maryland Constitutional Law*, p. 178. Although the governor may actually write his name upon a bill as approving it, in the presence of the proper officials, still he may prove by his own oral testimony that he signed it by mistake under a misapprehension of what it was, and without ever having gone through the mental operation of approving it, and that he immediately after, and before

the governor does not return a bill within six days after presentation, it becomes a law automatically as if he had signed it. Very few laws are passed in this manner. In general practice, the governor either approves or disapproves. However, the provision goes on to state, "unless the General Assembly shall, by adjournment, prevent its return, *in which case it shall not be a law.*"⁴⁵ If this clause were interpreted literally, a great number of perfectly good measures would be invalidated, for the greater majority of the bills are passed by the Assembly in the last few days of the session. As a matter of fact, the governor often signs bills after the adjournment of the General Assembly and they become laws just as if he had signed them during the session.⁴⁶

The practice of post-adjournment action by the governor upon bills presented to him within six days of the close of the session or even after adjournment began in the year 1880. At this time, several bills were presented to and signed by the governor after the legislature had adjourned and this practice has become more and more general.⁴⁷ In 1890, a bill was presented four days after adjournment and was signed four days after presentment; and the court held that the governor could legally sign bills after the adjournment of the legislature.⁴⁸ It is not altogether clear whether a bill must be presented within some limited time after adjournment and whether the governor must sign within some limit of time. In the Lankford case, the majority of the court assume that a bill will be presented "as soon as practicable after adjournment" and that a bill must be signed by the governor within six days from the presentment.⁴⁹ However,

the bill left the executive chamber, erased his name from the bill, and upon such evidence, if believed, the bill will be declared not to have received the governor's assent or to have become law. *Allegany County v. Warfield*, 100 Md. 516.

⁴⁵ Italics are the writer's.

⁴⁶ The present executive officer of the Department of Legislative Reference, Dr. Horace E. Flack, estimates that the present governor approves about two-thirds of the total number of bills passed during the session by post-adjournment action.

⁴⁷ *Lankford v. Somerset County Commissioners*, 73 Md. 105, 127.

⁴⁸ *Ibid.*, pp. 105, 111, 121.

⁴⁹ *Ibid.*, p. 111.

Judge Bryan in concurring thought that the governor had until June first to sign when the laws become effective;⁵⁰ and then he cited several laws of 1882 which were signed as late as May thirty-first.⁵¹ In general, though, the dictum of the court in this case was that the governor *ought* to sign within six days. Nevertheless, an examination of the statutes passed from 1912 to 1922 shows that the time limit of six days is little regarded as binding. During these years, the governors signed many bills quite some time after adjournment; in fact, the signatures range from ten to eighteen days after the close of the session.⁵² In conclusion, then, it might be stated generally that post-adjournment action by the governor in Maryland is valid action and that such bills signed thereby become laws.⁵³

Due to the fact, under the former practice, that the legislature was in the habit of rushing through important appropriation bills during the last days of the session and to the mal-practice of attaching "riders" or other extraneous matter to those bills, the governor was given the power to veto items in appropriation bills.⁵⁴ This power is not as important today as before the passage of the budget amendment. As has been mentioned in the discussion on the budget, the governor no longer possesses the veto power in any form over the budget or items listed therein. It was not deemed necessary in this case since the governor prepares the budget in

⁵⁰ Constitution, art. III, sec. 31.

⁵¹ Lankford v. Somerset County Commissioners, p. 121.

⁵² Acts of 1912, ch. 728; 1916, ch. 595; 1920, ch. 264; 1922, ch. 538. In two cases, the governor vetoed certain bills but later reconsidered them and fixed his signature thereto on July 11, 1912, over three months after adjournment! Acts of 1912, chs. 536 and 542. Ch. 440, of the Acts of 1912, which had been vetoed and later reconsidered, was approved July 25, 1912! No one ever questioned the validity of these laws.

⁵³ The power of the governor to veto bills after adjournment is an absolute one, called the "pocket" veto, since it is impossible for the legislature to repass the measure over his veto. Governor Ritchie is the only chief executive of Maryland to give reasons for his "pocket" vetoes. They are printed in the collections of laws issued by the state.

⁵⁴ Acts 1890, ch. 194, ratified by the people, November 3, 1891, and listed as part of the constitution, art. II, sec. 17.

the first instance.⁵⁵ However, the governor still retains his power to veto items in all supplementary appropriation bills.⁵⁶ This power has been greatly increased, not by specific authority but simply as a matter of construction, by the practice of the governor in construing the item veto to include the power to reduce the items themselves.⁵⁷ In fact, the court in at least one instance upheld the governor's action in so doing.⁵⁸

The veto power, taken as a whole, is a highly influential factor in enabling the governor to exercise an active influence in legislation whereby he may secure the passage of laws desired by him. The purpose of the veto, as given in the constitution, is largely a negative one; but certain extra-legal practices have operated to make it a definite positive influence. By the means of conferences with the leaders of the two houses, or with the proponents of particular bills, he may make his wishes known to the legislature while the bills are still pending in the two houses.⁵⁹ As one writer has said: "A bill's chance of passage is greatly enhanced when the word is passed that the governor desires its enactment. The obverse is also true when the word is passed that the governor is opposed to an issue."⁶⁰ Then, too, the governor may suggest after presentation to him that defective bills be recalled for amendments by the legislature. A recent case makes this practice somewhat regular in form by holding that, after a bill has been passed by both houses and presented

⁵⁵ Constitution, art. III, sec. 52, sub-sec. B.

⁵⁶ *Ibid.*, sub-sec. C.

⁵⁷ Acts of 1912, chs. 88 and 93; Maryland Public Documents, Message of the Governor to the Legislature, pp. 38-39. This follows the precedent in Pennsylvania as upheld in *Commonwealth v. Barnett*, 199 Pa. St. 161.

⁵⁸ *Nowell v. Harrington*, 122 Md. 488.

⁵⁹ In Alabama, the governor has the legal power to propose amendments to bills presented to him which he does not approve, and, in order to become law, they must be repassed over the veto. Dodd, *State Government*, p. 191; Mathews, *Principles of American State Administration*, p. 63.

⁶⁰ Green, "A Study of the Legislature of the State of Maryland," *Johns Hopkins Studies in Historical and Political Science*, 1929, p. 99.

to the governor for signature, it may be returned to the legislature for amendment and thereafter validly passed.⁶¹ As a sanction for the successful operation of this practice stands the threat of veto which is remarkably effective in securing executive influence in legislation. Thus may the veto be used as a positive means of control, a means not discernible in the constitutional provision itself.⁶²

EXECUTIVE LEADERSHIP IN LEGISLATION

In conclusion, then, the governor of Maryland has become a great guiding force in legislative matters through the operation of both legal and extra-legal means. By specific constitutional provisions, he is given the power to call special sessions of the General Assembly, to send both regular and special messages to the legislature, to prepare the financial program of the state in the form of the budget, and to exercise the veto power. The powers to call special sessions, to send recommendations, and to prepare the budget give him the initiative in legislation; and the power of veto enables him to compel adoption of the measures which he advocates. By means of those extra-legal powers described in preceding pages, he exercises additional control. If these fail, he may, as a last resort, appeal to the public sentiment of the state for support. When the governor and the legislature are in political agreement, as is true at the time of writing, the governor has a splendid opportunity to exercise a great measure of leadership in the work of legislation. He is usually, in this state, the recognized leader of his political party and his influence is exerted and felt at all times in the two houses of the Assembly. Seldom does it fail to have its effect.

⁶¹ *Baltimore Warehouse Company v. Canton Lumber Company*, 118 Md. 141.

⁶² For a general account of the executive's influence in legislation by means of the veto, see Dodd, *op. cit.*, pp. 191-196.

CHAPTER VII

SUMMARY AND CONCLUSIONS

The colonial governor of the Province of Maryland may be said to be the direct ancestor of the modern governor of the state. In the years immediately prior to the Revolution, one finds that the colonial executive exercised the executive powers of the military, external relations, appointment and removal of officers, and pardon and reprieve. In relation to the legislature, he had the power to call special sessions, to recommend legislation, and to veto bills passed by the Assembly. All of these powers, with certain modifications, under the same names are exercised by the governor today. As a matter of fact, the whole government of the Province in its general outline was the model, with minor exceptions, for the state government which came into existence after the War of Independence. The office of governor originated in the provincial charter and commission; it remained in the constitution which established the state.

At the height of his power, the colonial governor was executive, legislator, and judge all rolled into one. He had almost monarchical powers in the administration of the government. This condition of affairs, however, did not survive the seventeenth century. In fact, the history of the Province from the first years of its settlement to the year 1776 is the story of the struggle between the legislature and the governor for supremacy. Gradually, and influenced to a large extent by the evolution of democratic institutions in England, the governor was deprived of many of his prerogative powers and the legislature obtained almost an equal share in the government.

In the first constitution for the State of Maryland, established in 1776, the governor's position suffered a reversal. The constitutionalists, fearing a recurrence of the broad powers of the colonial executive, placed the state governor in an inferior and subordinate position. It is true that he

was constituted the supreme executive of the state and was granted great powers in the appointment of officers; but he was elected by the two houses of the General Assembly and was checked in his actions by an executive council also elected by the legislative body. The governor possessed no power in legislation and was denied even a qualified veto over bills passed by the Assembly. Ultimately, the representatives of the people possessed all the powers of government; and the governor, elected and controlled by them, was little more than their agent.

The governor remained in this subordinate and dependent position for over sixty years, when the first great change was made in the constitution. By the amendment of 1837, the passage of which was one of the results of a great reform movement, the governor was no longer made elective by the General Assembly but by popular vote for a term of three years, instead of one as formerly. The council was abolished and almost all of the appointments to office were vested in the governor subject to confirmation by the Senate. The election by popular vote, the abolition of the council, and the increase of the term of office, served to render the governor somewhat more independent of the Assembly than had been the case before, although his legislative functions were not increased.

By the constitution of 1851, the term of the governor was changed from three to four years, but his powers as an executive were radically reduced. He was nominally the head of the administration; but, in fact, he was little more than one among equals, for the chief administrative officers were to be henceforth elected by the people. The governor's functions in relation to the legislature, however, were increased. He was given the legal power to send messages and recommendations to it whenever he should deem necessary and expedient. He was given the authority to convene the General Assembly or the Senate alone in special session; and also in emergencies to direct the Assembly to meet at some other place than the state capital. Thus, the governor's powers as an adminis-

trator were materially reduced; but, on the other hand, his powers in relation to the legislature were increased by express constitutional provision. However, the force of these legislative powers was weakened by the absence of the veto power. The governor became largely a political officer.

A new constitution was adopted in 1864, but the governor's powers under it were not increased appreciably. The new instrument brought back some of his appointing power lost in 1851, but the increase was not great enough to change his position in regard to the now decentralized and uncoordinated administration. He was made a member of several administrative boards and given, thereby, additional duties to perform; but he was also subjected to a certain amount of legislative control in executing these duties since the boards were regulated entirely by statute. The governor's relation to the legislature was not altered. On the floor of the convention, a movement was put forward to grant him the power of veto. A measure was introduced to this effect; but after serious debate, it was tabled "as an unnecessary departure from the past." The General Assembly was still the most powerful force in the state and, it seemed, the radical wing of the Union party was determined to keep it in that position.

It was not long, however, before the position and power of the governor of Maryland received a great impetus forward. This came about with the adoption of the constitution of 1867, the one under which the state government operates today. The governor's power of appointment was greatly augmented as a result of the reaction of the members of the convention to the former practice of electing almost all of the executive and administrative officers by popular vote. He was granted the removal power in more sweeping terms than ever before over the officers of the administration. His supervision of the fiscal officers of the state, the Comptroller and the Treasurer, was strengthened by the power to remove them for cause in the recess of the General Assembly. But the most important change of all in the governor's office was one which gave him a negative influence in legislation; namely,

the granting to him of the power of veto over all bills passed by the legislature. The preamble to the section which confers the power states that its use is "to guard against hasty or partial legislation, and encroachments of the Legislative Department upon the co-ordinate Executive and Judicial Departments." Thus, the placing of the power of veto with the governor was meant to serve as a check upon the legislature. Just as the people, almost a hundred years before, had not forgotten the evils of the concentration of power in the hands of the colonial governor, so in 1867 they had not forgotten the evils of the concentration of power in the hands of the legislative body. The governor, elected by the voters of the whole state in contrast with the locally-elected legislators, was given the power to restrain the General Assembly; or at least to cause it to reconsider ill-advised and hasty laws. Summing up, the general result of the adoption of the constitution of 1867 was the increase of the power of the governor both legislatively as well as administratively; in consequence of which, the governor was to become, in later years, the leading figure in the state government.

Through the operation of both legal and extra-legal forces since 1867, and more particularly since the late years of the nineteenth century, the government of Maryland has become a government by the executive. The power of the legislature, bit by bit and from year to year, has decreased and that of the governor has increased. Not only by constitutional and extra-legal means has this evolution of power come about, but by statutory means as well. The legislature has granted the executive the power to make a great number of appointments without confirmation, to exercise the item veto over appropriations, to prepare the budget, and to control the administration. Some of these grants of power, to be sure, have been conferred by constitutional amendment; but the General Assembly in the first instance must pass upon such amendments. It seems that the legislature has realized its growing unimportance, that it has appreciated the swing of popular sentiment from itself to the governor, and that both

the legislature and the people have had thrust upon them the realization that the government can be run best when responsibility is definitely located. At any rate, the responsibility for good government has gravitated to the governor. It is to him that the people look for salutary laws, it is to him that they look for economical and efficient administration. Very seldom is the public disapproval expressed against the representative body; on the other hand, it is generally voiced against the governor.

If in any case the governor might misuse the responsibility now vested in him or overstep his bounds, the General Assembly retains the sanction of impeachment granted in very liberal terms by the constitution; to wit, "... the Legislature may provide by Law, for the impeachment of the Governor; and in case of his conviction . . . may declare what person shall perform the Executive duties . . ." If the governor neglects or refuses to perform any ministerial duty imposed upon him and not involving the exercise of his discretion, the courts may by mandamus compel his action. The people themselves have a check upon the executive through the operation of the referendum which, if the people so wish, compels the submission for their approval of any act, or part of any act, passed by the General Assembly and approved by the governor.

Thus, the increase in the power of the governor does not mean the breakdown of representative government in Maryland. The governor has become the central and most powerful figure in the State, but he is still responsible to the people at the polls or to their representatives in the state legislature. The General Assembly has allowed the governor to have almost absolute control over the administration and, to some extent, to have the initiative in law-making; but it has not totally ceded away the powers given to it by the constitution. It may withdraw them to itself whenever it might be so inclined.

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VITA

Charles James Rohr was born June 3, 1905, in Roland Park, Baltimore County, Maryland. He received his elementary education in the public schools of that county. In 1920 he entered the Baltimore City College, from which he was graduated in 1924. The following autumn he entered the Johns Hopkins University; and after completing three years in the undergraduate school, he entered the graduate school under the Goodnow Plan as a candidate for the degree of Doctor of Philosophy in the Department of Political Science. In the year 1929-1930 he was instructor in the Department of History at the University of Baltimore. He completed his residence at the Johns Hopkins, and during the year 1930-1931 obtained a leave of absence, during which time he was instructor in the Department of History and Political Science at Trinity College, Hartford, Connecticut. In July, 1931, he was raised to the rank of assistant professor. He received the degree of Doctor of Philosophy from the Johns Hopkins University in 1931.

